



ATCO Gas

2008-2009 General Rate Application – Phase II Negotiated Settlement

June 25, 2010



ALBERTA UTILITIES COMMISSION

Decision 2010-291: ATCO Gas

2008-2009 General Rate Application – Phase II

Negotiated Settlement

Application No. 1604944

Proceeding ID. 184

June 25, 2010

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Fifth Avenue Place, 4th Floor, 425 - 1 Street SW

Calgary, Alberta

T2P 3L8

Telephone: (403) 592-8845

Fax: (403) 592-4406

Web site: www.auc.ab.ca

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**ATCO GAS
2008-2009 GENERAL RATE APPLICATION – PHASE II
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1 INTRODUCTION

1. On March 30, 2009, ATCO Gas (ATCO) filed a 2008-2009 General Rate Application (GRA) – Phase II (Phase II Application)¹ with the Alberta Utilities Commission (AUC or Commission). The Phase II Application relates to both its north (ATCO North) and south (ATCO South) service territories.

2. Between March 30, 2009 and September 4, 2009 the Commission had established a process and schedule to deal with the Phase II Application and much of the litigated process had been completed with significant evidence placed on the record.

3. By letter dated September 4, 2009, ATCO requested approval to enter into a negotiated settlement process in respect of its Phase II Application.

4. In Decision 2009-150,² the Commission granted ATCO permission to negotiate with customer representatives a settlement of the matters addressed in its Phase II Application.

5. On November 17, 2009 ATCO filed with the Commission an application³ (Settlement Application) requesting approval of the 2008-2009 Negotiated Settlement⁴ (Settlement). The Settlement addressed all aspects of the Phase II Application and certain other matters. The Settlement Application and the Settlement are attached as [Appendix 3](#) to this Decision.

6. The Commission considers the record for Proceeding ID. 184 to have closed on March 29, 2010 with submission of Reply Argument. The Commission panel assigned to deal with the Phase II Application and the Settlement Application consisted of Willie Grieve, Chair, and Commissioners Bill Lyttle and N. Allen Maydonik, Q.C.⁵

¹ Application No. 1604944 – ATCO Gas 2008-2009 General Rate Application – Phase II (Received March 30, 2009).

² Decision 2009-150: ATCO Gas Request to Negotiate and ENMAX Rate Class Issue 2008-2009 General Rate Application – Phase II (Application No. 1604944; Proceeding ID. 184) (Released: September 25, 2009).

³ Exhibit 97, ATCO Gas 2008-2009 GRA Phase II Application by ATCO Gas for Approval of Negotiated Settlement Agreement (Received November 17, 2009).

⁴ ATCO Gas 2008-2009 GRA Phase II Negotiated Settlement (received November 17, 2009).

⁵ Deceased May 16, 2010.

2 BACKGROUND

7. The previous ATCO Phase II proceeding resulted in Decision [2007-026](#).⁶ During that proceeding, a comprehensive rate design review was conducted by the Alberta Energy and Utilities Board⁷ (the Board) in establishing rates for 2007. In addition, a number of significant changes to ATCO's rate design were made and several issues were directed to be addressed in the next GRA Phase II. Those issues included:

- classification of meter costs and a potential split of the Low Use Rate Group;⁸
- distribution units used to distribute demand costs, including recognition of diversity in cost allocation;⁹
- continued separation of the distribution mains and distribution services costs into two distinct functions;¹⁰
- change of minimum distribution mains size from 26 millimetres (mm) to 42 mm;¹¹ and
- continued use of ATCO North service line data as a proxy for ATCO South.¹²

8. On January 2, 2008 ATCO filed a 2008-2009 GRA Phase I application. The Commission dealt with this application and subsequent compliance filing applications in Decisions [2008-113](#),¹³ [2009-109](#),¹⁴ [2009-214](#),¹⁵ and [2010-025](#).¹⁶ As a result of these decisions the revenue requirements for the 2008 and 2009 test years were finalized subject to resolution of certain placeholder amounts.

9. In the Phase II Application ATCO requested approval for:

- the Cost of Service Study (COSS) methodology used in the preparation of the Proposed ATCO North COSS and Proposed ATCO South COSS;
- the proposed Rate Groups and rates shown on Schedule A (Tab E) of the Phase II Application and the ATCO North and ATCO South Rate Schedules be approved effective January 1, 2010 subject to:

⁶ Decision 2007-026: 2003-2004 General Rate Application Phase II Cost of Service Study Methodology and Rate Design and 2005-2007 General Rate Application Phase II (Application No. 1475249) (Released: April 26, 2007).

⁷ Predecessor to the Alberta Utilities Commission.

⁸ Decision 2007-026, page 14.

⁹ Decision 2007-026, pages 85-86.

¹⁰ Decision 2007-026, page 44.

¹¹ Decision 2007-026, page 60.

¹² Decision 2007-026, page 69 and Decision [2007-059](#): ATCO Gas 2005-2007 General Rate Application Phase II Compliance Filing to Decision 2007-026 (Application No. 1513143) (Released: July 31, 2007), page 5.

¹³ Decision [2008-113](#): ATCO Gas 2008-2009 General Rate Application Phase I (Application No. 1553052; Proceeding ID. 11) (Released: November 13, 2008).

¹⁴ Decision 2009-109: ATCO Gas 2008-2009 General Rate Application Phase I Compliance Filing (Application No. 1603068; Proceeding ID. 154) (Released: July 28, 2009).

¹⁵ Decision 2009-214: ATCO Gas 2008-2009 General Rate Application Phase I Income Tax Module (Application No. 1553052; Proceeding ID. 11) (Released: November 12, 2009).

¹⁶ Decision 2010-025: ATCO Gas 2008-2009 General Rate Application Phase I Second Compliance Filing (Application No. 1605412; Proceeding ID. 294) (Released: January 13, 2010).

- i. any re-filing requirements resulting from the final approved revenue requirement for 2009,
 - ii. the decision with respect to the Phase II Application, and
 - iii. any changes required for ATCO South related to the Carbon Production and Storage Charge and Riders G, H, and I;
- the Terms and Conditions of Service (T&Cs) for Distribution Access Service and the T&Cs for Distribution Service Connections, including Schedule “C” charges;
 - the use of deferral accounts by ATCO to address the outstanding matters related to placeholders and to address the removal of Carbon from utility service; and
 - final rates for the years 2008 and 2009, subject to the removal of Carbon from utility service.

10. The Commission issued Notice of Application on its website under Proceeding ID. 184 on April 8, 2009 with respect to the Phase II Application. A Statement of Intent to Participate (SIP) was submitted by the April 22, 2010 due date by each of AltaGas Utilities Inc. (AUI), BP Canada Energy Company (BP), Shell Energy North America (Canada) Inc. (Shell), the Consumers’ Coalition of Alberta (CCA), Nexen Marketing (Nexen), the Office of the Utilities Consumer Advocate (UCA), and the Rate 13 Group (R13 Group).¹⁷

11. The Commission received a late SIP from ENMAX Energy Corporation (ENMAX), and, by letter dated May 22, 2009, granted its request to participate.

12. The Commission established the following process schedule to deal with the Phase II Application in its letter of May 13, 2009:

Process Step	Deadline Date
Information Requests to ATCO Gas	June 15, 2009
Information Responses from ATCO Gas	June 29, 2009
Workshop to Clarify Information Responses/Application	July 9, 2009
Intervener Evidence	July 29, 2009
Information Requests to Interveners	August 13, 2009
Information Responses from Interveners	August 27, 2009
Rebuttal Evidence	September 10, 2009
Workshops to Explore Resolution of Any Issues	September 15 - 18, 2009
Written Comments from Parties with Respect to the Need for an Oral Hearing	September 25, 2009
Commission Determination on Need for Oral Hearing	October 2, 2009

13. The process steps in the schedule above were followed, and significant evidence was placed on the record of this proceeding, up to and including information responses from interveners.

¹⁷ The members of the Rate 13 Group include high load factor /high use customers taking service from ATCO Gas.

14. By letter dated September 2, 2009, ENMAX requested a separate delivery service rate class be established for larger gas consumption customers such as ENMAX's planned Bonnybrook Energy Centre,¹⁸ and that this issue should be added to the proceeding.
15. On September 4, 2009, before rebuttal evidence was due, ATCO requested approval to enter into a negotiated settlement process for the Phase II Application.
16. In Decision 2009-150, the Commission granted permission for ATCO to negotiate a settlement of its Phase II Application and denied the ENMAX request.
17. By letter dated September 22, 2009, The City of Calgary (Calgary) requested leave from the Commission to file a late SIP due to material developments in the proceeding (including the desire to participate in any settlement discussions) which had caused Calgary to reconsider its participation. In a ruling dated September 30, 2009, the Commission granted Calgary's request to participate with the caveat that Calgary could not submit evidence or request changes to the proceeding schedule.
18. ATCO filed notice of the settlement negotiations on the AUC's website under Proceeding ID. 184 which was distributed to parties, and sent notice directly to interested parties registered in the Phase II Application. Parties that participated in the negotiation were ATCO, R13 Group, Calgary, the UCA, and the CCA. The Commission appointed an observer to the negotiations as per section 5 of AUC [Rule 018: Rules on Negotiated Settlements](#) (Rule 018). Several negotiation meetings were held with representatives from all participating parties.
19. On November 17, 2009 ATCO filed with the Commission the Settlement Application with the Settlement attached as Appendix A. ATCO, R13 Group, Calgary, the UCA, and the CCA are the parties to the Settlement (Settlement Parties). Despite the Commission's approval given in Decision 2009-150 to negotiate matters with respect to the Phase II Application, the term of the Settlement is for the period from January 1, 2010 to December 31, 2015.
20. In the Settlement Application, ATCO requested approval of the following matters:¹⁹
 - the methodology utilized to develop the 2009 COSS contained in Attachment 1 of the Settlement and as outlined in clauses 2.10 to 2.23 of the Settlement;
 - the split of the Low Use Rate Group into a Low Use Rate Group and a Mid Use Rate Group effective January 1, 2011 as described in clause 2.10 of the Settlement and as per the 2009 COSS contained in Attachment 1 of the Settlement;
 - the methodology described in clause 2.1 of the Settlement to determine rates for 2010;
 - the T&Cs as attached to the Settlement Application in Appendices B1 and B2, including the Schedule "C" charges effective January 1, 2010 or as soon as possible thereafter, as outlined in clauses 3.1 to 3.2 of the Settlement and approval of the implementation of the Schedule "C" charges as provided for in clause 3.3 of the Settlement;
 - the rate design matters as addressed in clauses 4.1 to 4.4 of the Settlement;

¹⁸ A 165 megawatt natural gas-fired combined heat and power facility which would consume 33,600 gigajoules per day of natural gas.

¹⁹ Settlement Application, pages 3-4.

- the changes to the rate schedules as addressed in clauses 6.1 to 6.5 of the Settlement;
- the use of deferral accounts as outlined in clause 2.11, clause 3.3 and clause 5.2 of the Settlement; and
- any other matter that the Commission views as necessary to give effect to the Settlement in its entirety.

21. The Commission issued Notice of Settlement Application on its website under Proceeding ID. 184 on December 23, 2009 and also issued the Notice publicly, publishing it in the Calgary Herald and the Edmonton Journal on December 31, 2009. Included in the Notice was a brief summary of the main aspects contemplated by the Settlement, including the parties that participated in the negotiation meetings, the time period covered by the Settlement (2008-2015), the creation of a new rate group effective January 1, 2011 (the Mid Use Rate Group) and the proposed range of percentage rate changes, effective January 1, 2011, for each of the Rate Groups.

22. By letter dated January 14, 2010,²⁰ the Public Institutional Consumers of Alberta (PICA) expressed objection to certain aspects of the Settlement Application and requested some form of cost recovery in order to participate in the proceeding. The Commission denied PICA's request for cost recovery by letter dated January 22, 2010²¹ but considered PICA's letter as an expression of interest in the proceeding and therefore registered PICA as a participant. The Commission stated: "PICA is free to participate in this proceeding without cost recovery to represent the interests of its members and to assist the Commission in understanding the impacts of the rate structure changes on its members."

23. By letter dated January 21, 2010, the Commission determined that additional written process was warranted and established a supplementary Information Request (IR) process and updated the schedule for Argument and Reply Argument. The Commission and PICA submitted IRs to ATCO and the Settlement Parties on several topic areas, including the Settlement timeframe.

24. In its February 5, 2010 cover letter to its supplementary IRs, the Commission advised the Settlement Parties that, notwithstanding the "package-deal" nature of the Settlement, it was not prepared to accept the Settlement on the basis of a single 2008-2015 arrangement because approval was not obtained in Decision 2009-150 for negotiation of a Settlement for the 2010 to 2015 period. The Commission proposed splitting the Settlement timeframe into two separate applications, one for 2008-2009 and the other for 2010-2015, and asked parties for comments. The Commission also stated that should it approve the Settlement with respect to the years 2008-2009 period, such approval would not bind it with respect to its disposition of the Settlement as it relates to the 2010-2015 period.

25. Submissions representing each of the Settlement Parties were filed in response to the Commission's request for comments. Responses were received from ATCO, the CCA (on behalf of the CCA, the UCA and Calgary), and the Rate 13 Group. Opposition to the Commission's proposal to divide the Settlement into two separate time periods was unanimous. The reasons given for the opposition related to the Settlement being a complete package, including the whole time period covered, and the Settlement represented give and take by all parties.

²⁰ Exhibit 102.

²¹ Exhibit 104.

26. By letter dated February 23, 2010, the Commission accepted the position of the Settlement Parties that the 2008-2015 timeframe of the Settlement be considered as a single indivisible application, and that it should be accepted or rejected in its entirety.

27. On March 9, 2010, the Commission issued a second round of IRs on the Settlement Application and the Settlement, and further updated the schedule for Argument and Reply Argument.

28. In reaching its determinations set out within this Decision, the Commission has considered all relevant materials comprising the record of this proceeding, including the submissions provided by each party. Accordingly, references in this Decision to specific parts of the record are intended to assist the reader in understanding the Commission's reasoning relating to a particular matter and should not be taken as an indication that the Commission did not consider all relevant portions of the record with respect to that matter.

3 SETTLEMENT OVERVIEW

29. The Settlement Application and the Settlement deal with the following topics:

- Settlement fairness/public interest;
- Settlement term, comprehensiveness and term extension provision;
- timing of Settlement rate structure and contemplated rate level changes;
- COSSs underlying the Settlement and associated changes to functionalization, classification and distribution of costs;
- rate design and rate schedule changes including splitting of the Low Use Rate Group into two new Rate Groups effective January 1, 2011;
- relationship of Settlement and resulting rate structures and rates to the 2008/2009 Phase I Decision (Decision 2008-113) and subsequent compliance decisions;
- T&Cs, including Schedule "C" charges;
- Settlement re-openers; and
- ATCO commitments related to service enhancements and allocation methodology reviews.

4 STATUTORY AND COMMISSION REQUIREMENTS FOR A NEGOTIATED SETTLEMENT

4.1 Legislation

30. ATCO submitted that the Settlement Application was being made under section 28.53 of the *Gas Utilities Act R.S.A. 2000, c. G-5 (Gas Utilities Act)*, and in accordance with AUC Rule 018. ATCO requested approval of the Settlement in its entirety.

31. Under section 36 of the *Gas Utilities Act*, the Commission has the power to fix just and reasonable rates and tolls. The *Gas Utilities Act* also provides the Commission with the power to consider and approve negotiated settlements. The relevant provisions provide:

28.51(1) The Commission shall recognize or establish rules, practices and procedures that facilitate

- (a) the negotiated settlement of matters arising under this Part, and
- (b) the resolution of complaints or disputes regarding matters arising under this Part.

28.52 As part of the rules, practices and procedures for the negotiated settlement of matters or the resolution of complaints or disputes, the Commission may...

- (c) provide for employees of the Commission to attend the settlement process;
- (d) recognize or establish rules to ensure that the parties to an issue receive
 - (i) adequate notice of the settlement process and the matters in issue,
 - (ii) adequate disclosure of the positions of the parties and the basis for those positions, and
 - (iii) an appropriate opportunity to participate in the settlement process;
- (e) recognize or establish rules governing the extent to which persons who are not parties, or classes of persons who are not parties, may participate in the settlement of an issue; ...

28.53(1) If a settlement of an issue that is within the jurisdiction of the Commission has been negotiated, the Commission may approve the settlement.

(2) Any issue dealt with in a settlement approved by the Commission is not subject to further consideration in the hearing of the matter to which the settlement relates.

(3) Subject to subsection (4), the Commission may require a party to provide to it any records relating to the settlement that it considers appropriate.

(4) The Commission shall not receive or consider any submission, position, evidence or information provided by a party on a without prejudice or confidential basis in the course of negotiating a settlement under this Part without the express consent of that party.

32. Sections 4(1) and (2) of Rule 018 set out the requirements for initiating a negotiated settlement process.

4(1) An applicant may only commence negotiations with the approval of the Commission.

(2) An applicant must notify the Commission of its intention to initiate a negotiated settlement process and provide the Commission with an outline of the pertinent issues to be resolved.

33. As outlined in section 6 of Rule 018, the utility must provide material to allow the Commission to assess the impact of a negotiated settlement to rates and services, including:

- 6(1)** Subject to section 3, when an agreement is reached on all or some of the issues, the text of the agreement, including a representation that no party has withheld relevant information, must be circulated to all parties to the agreement.
- (2)** Upon the concurrence of the parties on the text of the agreement, an application for approval, must be filed with the Commission.
- (3)** At a minimum, the application must include the following:
 - (a) evidence of adequate notice;
 - (b) the settlement agreement;
 - (c) details of issues not resolved;
 - (d) outline of issues where acceptance is not unanimous, including the names of those who disagree;
 - (d) the rates that result or will result from the settlement, supported by schedules, to assist the Commission in understanding how the rates were derived;
 - (e) the text of any changes to the terms and conditions of service with supporting information;
 - (f) a description of any outstanding issues; and
 - (g) unless the Commission directs otherwise, a settlement brief explaining the basis of the settlement and how it meets the interests of the parties and the public interest.

34. Section 6(5) indicates that the onus is on the applicant to ensure that there is sufficient evidence to support the application, and that the quality and detail of the evidence and the rationale for the settlement of issues are sufficient to enable the Commission to understand and assess the agreement.

35. ATCO submitted that the components of the Settlement were inextricably linked and that the Settlement was therefore presented to the Commission for approval as a single package and was contingent on the Commission's approval of the entire package.²²

36. Section 28.6 of the *Gas Utilities Act* provides:

28.6 If the parties negotiate a settlement on the basis that the settlement is contingent on the Commission's accepting the entire settlement, the Commission must either approve the entire settlement or refuse it.

²² Settlement Application, paragraph 3 and Settlement clause 9.12.

37. Given that the Settlement was negotiated on the basis that it must be accepted or rejected in its entirety by the Commission, the Commission will, as set out in its letter of February 23, 2010, proceed on that basis in this Decision.

38. Section 8 of Rule 018 deals with unanimous or unopposed settlement agreements. Section 8(1) provides that the Commission must assess whether the settlement results in rates and terms and conditions that are just and reasonable. Section 8(2) states that the Commission must intervene if the Commission determines that a unanimous settlement is patently against the public interest or contrary to law.

39. In Decision 2008-133,²³ the Commission canvassed previous regulatory and court decisions on the Board's Guidelines and Rule 018. The Commission stated:

The Guidelines and subsequent amendments have been considered in several Board and Alberta Court of Appeal decisions. Decision 2000-85¹⁶ considered the 1998 version of the Guidelines at page 6 and outlined the approach to be utilized by the Board when reviewing a unanimous settlement:

In a consensus settlement, the Board considers that two main questions arise. First, the Board must examine the settlement process to ensure it was fair and in accordance with the criteria set out in the Negotiated Settlement Guidelines. In particular, the Board considers that it should be satisfied that proper notice has been provided, no negative response was received to the notice for objections, due process has been provided to participants by allowing for meaningful participation in the process including the funding of interveners' participation, Board staff has participated as an observer in the settlement discussions, and all parties expressing an interest have signed off on the settlement.

Second, the Board must evaluate the settlement to determine whether there are elements which, in the Board's view, could result in rates which are not just and reasonable. In exercising this discretion, the Board believes that it should proceed with caution. The Board is charged with determining whether the settlement will result in rates that are just and reasonable. However, the Board acknowledges that if a settlement is changed in a way that is significant to the parties, it could prove detrimental to that agreement and any future settlements. The Board is mindful that in a package settlement compromises are struck that underpin the acceptability of the agreement among the parties, the importance of which may not be readily apparent to the Board. However, if a review of the settlement, including the possible empanelling of witnesses, reveals provisions that are patently against the public interest, the Board must act to change the agreement. To do otherwise would result in rates that are not just and reasonable. It may do that in a number of ways, including sending the settlement back to enable parties to deal with certain issues before the Board decides, deny the application citing the areas of concern, or direct that the settlement be litigated.

²³ Decision 2008-133: NOVA Gas Transmission Ltd. 2008-2009 Revenue Requirement Settlement Application (Application No. 1566927, Proceeding ID. 23) (Released: December 17, 2008).

The Board recognizes that when unanimous settlements agreed to by all the interested parties are presented to it, it should restrain any inclination to alter the consensus settlement solely on the basis that it may have done things differently. It is only in circumstances where the settlement is patently against the public interest or contrary to law that the Board should intervene.²⁴

¹⁶ Decision 2000-85, Northwestern Utilities Limited Approval of Rates, Tolls, Charges, and Terms and Conditions of Service for Core Customers, and Approval of Amendments to the North Core Agreement (Application 2000297) (Released: December 22, 2000) pp. 3-8

40. The items discussed above in Decision 2000-85 and Rule 018 can be divided into two main groups: the fairness of the process used in arriving at a negotiated settlement and the degree to which the settlement is in the public interest.

41. The Alberta Court of Appeal in *ATCO Electric Limited v. Alberta (Energy and Utilities Board)*, 2004 ABCA 215 commented on the Board's Guidelines and provided guidance with respect to the Board's obligations in considering settlement agreements. At paragraphs 138-139 of that Decision the Court stated:

The ultimate responsibility for approving negotiated settlements – and ensuring that the process operates in a fair and reasonable manner – must rest with an independent body. That body is the Board....

Thus, as long as the distribution and transmission functions of electric utilities remain regulated, the negotiated settlement process does not replace an appropriate and informed review by the Board as to what is in the overall public interest. Otherwise, members of the consuming public may rightly ask: "Who's protecting our interest?" The answer, at the end of the day, is the Board. That is why negotiated settlements require Board approval. And it is also why the Board's discretion in controlling rates as mandated by statute cannot be fettered by a negotiated settlement...

42. The Court of Appeal also provided the Board with guidance in defining the nature of the public interest to be considered in assessing whether to approve a negotiated settlement and in assessing whether the resulting proposed tariff is just and reasonable. The Court determined that in the circumstances where the Board is being asked to approve a negotiated settlement in its entirety, the public interest to consider with respect to both approval of the settlement and approval of the rates and tariffs is the same. In these circumstances the public interest means the interest of the rate-paying public and not the interests of the utility. The Court stated in paragraphs 141 and 142:

I have concluded that, when the Board is reviewing a utility's application to approve a negotiated settlement agreed to by that utility and determining whether the rates and tariffs contained therein are just and reasonable, the public interest then remaining to be considered by the Board in both instances is the same. In these circumstances, that public interest – redefined to comport with the context in which the interest arises – means the interest of the rate-paying public only, and not the interests of the utility. Thus, for purposes of determining whether to approve the settlement and rates, the Board need not evaluate whether the settlement adequately protects the utility's economic interests.

²⁴ Decision 2008-133, page 5.

I do wish to emphasize that my reasons are confined to the case where a negotiated settlement is presented to the Board for approval and the Board approves the settlement in its entirety. This may occur in one of two ways: (1) if the settlement is presented as a package deal and approved as such by the Board; or (2) if the settlement is not presented as a package deal but is nonetheless approved in its entirety by the Board. In both events, the Board need not have regard to the utility's interest in deciding whether to approve the negotiated settlement.

43. Accordingly, in assessing whether or not to approve the Settlement, the Commission must accept or reject the Settlement in its entirety, and in so doing must consider the fairness and public interest factors with the objectives of determining:

1. if the process resulting in the Settlement was fair, and
2. if approval of the Settlement will lead to rates and terms and conditions that are just and reasonable. In making this determination the Commission will consider if the Settlement is patently contrary to the public interest or contrary to law.

4.2 Fairness of the Negotiated Settlement Process

44. As noted in the previous section of this Decision, the first question for the Commission to consider is whether the settlement process itself was fair.

4.2.1 The Settlement Process

45. In the Settlement Application ATCO submitted:

The Settlement process was open and fair and provided an appropriate forum for meaningful stakeholder participation. Furthermore, considering the extensive body of evidence available on the Phase II proceeding record, there was sufficient information available to all parties to facilitate the negotiations.²⁵

46. Section 3 of Rule 018 deals with the provision of notice by the utility to parties who may be interested in participating in the settlement negotiations. Rule 018 states:

3(1) The Commission requires a statement in the settlement agreement confirming that proper notice was provided by the applicant to all interested parties.

(2) The notice provisions in the Rules of Practice apply [to] the giving of notice under these rules.

47. Paragraph 11 of the Settlement Application addresses the issue of notice as follows:

As confirmed in Clause 9.10 of the Settlement, the parties to the Settlement acknowledge that appropriate notice in respect of the negotiation process was provided to all interested parties registered for the Phase II proceeding. Notice of the process was provided through the filing of ATCO Gas' request to commence a negotiation process related to this proceeding, through the approval of that request by the Commission in its correspondence of September 25, 2009, and through the filing by ATCO Gas of meeting notices on the AUC website, which were distributed to all interested parties.

²⁵ Exhibit 97, Settlement Application, paragraph 4.

48. Although notice of settlement negotiations was provided by ATCO on the AUC website which was distributed to registered parties under Proceeding ID. 184, the Commission remained concerned that all interested parties that might be impacted by the Settlement may not have been aware of the negotiation process or of the terms of the resulting Settlement, particularly with respect to the time period covered and the creation of a new Mid Use Rate Group. For this reason the Commission issued Notice in respect of the Settlement Application on its website under Proceeding ID. 184, followed by a formal public Notice, dated December 23, 2009, which was published in the Calgary Herald and Edmonton Journal on December 31, 2009. The December 23, 2009 Notice clearly indicated the time frame of the Settlement, the fact that the new Mid Use Rate Group had been proposed, and the projected percentage rate impacts each of the Low Use, Mid Use and High Use Rate Groups would experience effective January 1, 2011. Based on this information, the Commission considers that adequate notice was provided.

49. Parties active in the negotiations and ultimately signatories to the Settlement were: ATCO, UCA, CCA, R13 Group, and Calgary. Negotiation settlement meetings were held on October 7, October 9, October 14, and October 21, 2009. Registered parties that did not actively participate in the negotiated settlement process were BP, Nexen, Shell, AltaGas and ENMAX.

50. The Commission observer to the negotiations, as permitted by section 5(2) of Rule 018, advised the Commission as to fairness of the settlement process. The observer supported ATCO's assertion that the settlement process was open and fair and provided a forum for meaningful stakeholder participation.

51. The Commission is aware that parties to the settlement negotiations had available to them at the time that negotiations commenced a substantial amount of information, including the Phase II Application, ATCO's responses to IRs, intervener evidence, and intervener responses to IRs. The Commission considers that the availability of this material should have allowed parties to sufficiently understand the Application and participate in the negotiations on an informed basis. The Commission concludes that this would have contributed to a fair negotiation process.

52. The concerns of the Commission with respect to the timeframe covered by the Settlement and the creation of the Mid Use Rate Group are discussed further below.

4.2.2 The Timeframe and Scope Covered by the Settlement

53. As noted above, the Commission expressed concern with the timeframe and scope of issues covered by the Settlement which are broader than the approvals sought or provided in Decision 2009-150. Decision 2009-150 approved the negotiation of the Phase II Application while the Settlement provides for agreement on Phase II issues until the end of 2015 and also provides agreement on the process to determine 2010 rates. This section of the Decision deals with the impact of the expanded term and scope on the fairness of the negotiated settlement process.

54. In a letter dated January 14, 2010,²⁶ PICA, who was not a party to the proceeding or to the settlement negotiations, filed a letter expressing objection to certain aspects of the Settlement Application but did not express concern with respect to the timeframe or scope covered by the Settlement.

²⁶ Exhibit 102.

55. Given that the Commission issued an additional notice on December 23, 2009 with respect to the Settlement Application, and that PICA and the parties to the Settlement were not opposed to the timeframe or scope covered by the Settlement, the Commission does not consider the inclusion of the 2010 - 2015 time period or broader scope than approved in Decision 2009-150 as unduly impacting the fairness of the negotiated settlement process.

56. The term and scope of the Settlement will also be discussed in the public interest analysis section of this Decision.

4.2.3 Representation of the Mid Use and Irrigation Rate Groups

57. In PICA's January 14, 2010 letter noted above, it objected to the Settlement on the following basis:

...As the Commission is aware, PICA typically represents mid and large use customers in these proceedings. However, given PICA's absence from these negotiations the mid use customers were not represented at all in the negotiations. PICA notes about a 12% increase in rates for the mid use group, while other rate groups are receiving decreases. This increase to the mid use group would particularly impact institutions, such as schools, in addition to a broad range of small and medium size business which have typically benefited indirectly from PICA's interventions in the past.

The Commission has a public interest mandate to ensure the approved rates are just and reasonable from the point of view of all customer groups. In this instance, PICA objects to the application on the basis certain issues contributing to the increase for the mid use group may not have been negotiated with the benefit of representation on behalf of the mid use group. These issues include questions respecting the appropriate weighting of meter costs and service line costs, as well as the appropriate consumption range of the mid use group. A larger range of consumption for the mid use group would impact the rate changes by each user group. Further, the settlement does not give any consideration to mitigating the rate impact to the mid use group resulting from the settlement....

58. PICA also requested the Commission to exercise its discretion under [Rule 022: Rules on Intervener Costs in Utility Rate Proceedings](#) and grant PICA the ability to submit a cost claim in the present proceeding. The Commission denied PICA's request for cost eligibility in its letter of January 22, 2010, but registered PICA as a proceeding participant noting:

...PICA is free to participate in this proceeding without cost recovery to represent the interests of its members and to assist the Commission in understanding the impacts of the rate structure changes on its members.

59. In the supplementary IR process initiated by the Commission in its January 21, 2010 letter, the Commission and PICA submitted IRs. To better understand the representation of the Mid Use and Irrigation Rate Groups, the Commission included IRs on this topic. In their IR responses, the Settlement Parties submitted:

Mid Use customers were represented by the UCA and Calgary. The UCA has traditionally represented the interest of the entire Low Use class. Thus, the UCA in the course of the negotiations represented both intra-class groups throughout the settlement process. In its evidence in the 2005 – 2007 GRA Phase II, Calgary took the lead in identifying issues within the Low Use class recognizing the various inequities under the single class concept. In its filings in the current Phase II proceeding, the UCA took a

similar role identifying the issues and providing an equitable set of alternatives for splitting the Low Use class into two sub classes. Calgary was also representing both the Mid Use and Low Use class, as their own facilities are served throughout the consumption range of the former Low Use rate. The City has several facilities which use over 1,200 GJ per year as well as those that use less. In addition, the City has several sites which are served under the High Use class rate.²⁷

60. The UCA stated that it represented the Irrigation customers²⁸ and outlined reasons related to declining load factors and an increasing percentage of total costs being demand driven as support for the Irrigation Rate Group's rates being just and reasonable.²⁹

61. The UCA also submitted it did not experience any conflict of interest in its representation of the Low Use, Mid Use and Irrigation Rate Groups and that it had not been required to compromise its position in this proceeding stating:

...The UCA considers that the end rate design reflects a balance of the interests of the Low Use, Mid-Use and Irrigation customers as represented by the UCA as discussed in AUC-UCA-12(a) as well as all other customers, and therefore should be considered just and reasonable.³⁰

62. With respect to the specific factors it considered in representing the respective interests of the Low Use, Mid Use and Irrigation Rate Groups the UCA stated:

The UCA started with the positions set forth by Calgary's witnesses Vander Veen and Johnson in the 2005-07 GRA Phase II concerning the observed inequities in the then current Low Use Rate class. The UCA then submitted a wide ranging review of cost classification, cost utilization and cost allocation parameters for the Low Use Rate class in the 2008-09 GRA Phase II. [See UCA filing of July 30, 2009 which addresses the wide range of issues concerning the appropriateness and homogeneity of the Low Use Rate Class and the UCA suggested alternatives.] These identified alternatives addressed cost classification and cost allocation issues which had originally been identified in 2005 – 07 GRA Phase II. The UCA and Calgary had recognized that there were cross subsidy issues between smaller and larger low use customers. The Parties in both the 2005-07 and 2008-09 GRA Phase II proceedings also recognized that there were cost allocation issues concerning the Irrigation class.

Thus the UCA entered into the negotiation process with a broad foundation of data. The UCA used these data bases as the foundation for its negotiating activities. The UCA had presented a foundation for both cost classification and cost allocation in its July 30, 2009 filing which it deemed fair and reasonable to the Low Use Class, the Mid Use Class and Irrigation Customers. Thus the UCA began and ended its negotiation process being guided by the tenets of fair and reasonable results. The specific rate level increases are simply the result of the Settlement....³¹

63. Although not a party to the Settlement negotiations, PICA did actively participate in the proceeding with the submission of IRs and Argument. In Argument, despite the reservations

²⁷ Exhibit 114, AUC-SP-1(a).

²⁸ Exhibit 114, AUC-SP-1(c).

²⁹ Exhibit 119.02, AUC-UCA-12.

³⁰ Exhibit 119.02, AUC-UCA-12(c).

³¹ Exhibit 119.02, AUC-UCA-12(b).

advanced by PICA in its January 14, 2010 letter, PICA indicated support for the Settlement, subject to the timing of ATCO's review of weightings used in service costs classification and distribution dealt with in clause 7.1 of the Settlement Agreement. At page 1 of its Argument PICA stated:

The Public Institutional Consumers of Alberta (PICA) has reviewed the Negotiated Settlement dated November 17, 2009. Although not opposed to the Negotiated Settlement reached by the Settlement parties; PICA proposes a change to clause 7.1 of the Agreement.³²

64. On this basis, the Commission is satisfied that the Mid Use and Irrigation Rate Groups were sufficiently represented in the settlement negotiation process to conclude that the Settlement negotiation process was fair.

4.2.4 Commission Findings on Fairness of the Negotiated Settlement Process

65. Based on the above, the Commission is satisfied the Settlement Application meets the requirements of section 6(3) of AUC Rule 018 because:

- (a) evidence of adequate notice was provided,
- (b) the Settlement was filed with the Commission,
- (c) all issues were resolved, including provision for certain placeholders specifically identified in the Settlement and being addressed in other proceedings,
- (d) acceptance of the Settlement was unanimous,
- (e) although the Settlement Application did not include the specific rates that result or will result from the Settlement, supported by schedules, to assist the Commission in understanding how the rates were derived, it did include illustrative rate impacts, a description of why specific rates and rate schedules could not be supplied at this time, and a plan and timeframe for the filing of these future rate applications,
- (f) blackline copies of the T&Cs were included as appendices to the Settlement Application
- (g) there are no outstanding issues, except as noted in the Settlement,
- (h) the basis of the Settlement is provided in the Settlement Application, and
- (i) a settlement brief (the Settlement Application) explaining the basis of the settlement and how it meets the interests of the parties and the public interest was provided.

66. The Commission is satisfied that the information filed with the Settlement, the notice provided by ATCO and supplemented by the Commission, and the attendance of Commission staff in the negotiations provide a level of assurance that interested parties were provided with sufficient notice, adequate materials, and the opportunity to meaningfully participate, and that the negotiations were conducted in an open and fair manner.

³² PICA Argument, dated March 22, 2010. PICA recommended ATCO be required to complete the weighted customer information for each Rate Group used for the classification and distribution of Distribution Service costs by December 31, 2011, and, to the extent material, reflect any revisions in the weightings in the go forward cost of service study and rate design. PICA submitted clause 7.1 of the Settlement be amended to reflect this further requirement.

67. The Commission also accepts that the Settlement Parties require the Settlement to be considered by the Commission in its entirety and that sufficient opportunity was presented for parties representing the interests of the Mid Use and Irrigation Rate Groups to voice any concerns they had with the Settlement.

68. Accordingly, the Commission finds that the process leading to the Settlement satisfies the requirements relating to fairness of the negotiated settlement process as set out in sections 3, 4 and 6 of Rule 018.

4.3 Public Interest

4.3.1 Basis for Analysis

69. The second question for the Commission to consider is whether the Settlement is in the public interest, including whether it will result in rates that are just and reasonable. In Section 4.1 of this Decision, the Commission confirmed that it is mandated by the *Gas Utilities Act* to ensure that the rates resulting from the Settlement are just and reasonable. This requirement is also reflected in section 8(1) of Rule 018 which indicates that the Commission, when evaluating the merits of a unanimous settlement, will assess whether the settlement results in rates and terms and conditions that are just and reasonable. Section 8(2) requires the Commission to intervene if it determines that a unanimous settlement is patently against the public interest or contrary to law.

70. In conducting this assessment, given that the Commission must consider the Settlement as a package deal, the Commission has considered the public interest from the ratepayers' perspective in accordance with the guidance provided by the Court of Appeal referred to in paragraph 42 above. The Commission also considered whether the effect of the Settlement, taken as a whole, would lead to rates and terms and conditions that were just and reasonable.

71. In addition, by way of further comfort to the Commission in considering the public interest, the Commission has reviewed each of the material provisions of the Settlement in order to determine if any of these material provisions, individually, appear contrary to accepted regulatory practices, unusual or could result in undue rate impacts, service concerns, preferences or other difficulties in future rate applications.

72. In conducting its public interest analysis the Commission has taken into account all information on the record, including information filed by all parties in connection with the Phase II Application, the Settlement Application and the Settlement. The fact that the Settlement includes elements filed in the Phase II Application and was tested by the Commission and interveners through IRs, that interveners filed evidence and IR responses and that the Settlement itself was tested through two rounds of IRs, provided the Commission with an additional basis on which to conduct its public interest analysis.

4.3.2 ATCO

73. ATCO requested approval to negotiate a settlement with its customers, negotiated and executed the Settlement, and applied to the Commission for approval of the Settlement. These factors indicate that the Settlement as a whole is acceptable to ATCO.

4.3.3 General Public Interest Factors

74. ATCO submitted that the Settlement is reasonable and fair to the parties and is in the public interest. Specifically:

- The Parties who are signatories to the Settlement are knowledgeable concerning the matters addressed by the Settlement and their consensus provides a basis on which the Commission can reasonably conclude the Settlement is in the public interest.
- The Settlement results in greater regulatory efficiency compared to a litigated process.
- The rates resulting from the Settlement are just and reasonable and rate shock is not occurring for any rate group. ATCO Gas provided a cost comparison at different levels of consumption in Appendix C to the Settlement Application. The comparison is based on the rates shown on Schedule A provided in Attachment 1 of the Settlement, and what the rates would have been based on the COSS methodology approved in Decision 2007-026 (with the addition of the new Mid Use rate group for proper comparability).
- The Settlement is consistent with existing law and Commission policies.³³

75. The topics that were issues in the litigated part of the proceeding appear to have been resolved in the Settlement. The Commission is of the view that the continuity of these issues from the filed GRA to the Settlement is supportive evidence to the comprehensive nature and inherent trade-offs of a negotiated settlement.

76. With respect to just and reasonable rates and the possibility of rate shock, the Commission was initially concerned with what appeared to be a large rate increase that would be experienced by customers who would now be categorized as the Mid Use Rate Group as shown in Appendix C to the Settlement Application and summarized in Table 1 below.

Table 1. Percentage Rate Increases by Rate Group

Rate Group	Rate Change Range AG South (%)	Rate Change Range AG North (%)
Low Use	-9.0 to 1.5	-10.4 to 1.8
Mid Use	11.7 to 12.4	11.6 to 11.8
High Use	-16.1 to -1.0	-19.4 to -5.3
Irrigation	1.9 to 9.7	N/A

77. Subsequent to the Commission’s December 23, 2009 public notice which included this concern, ATCO provided two additional rate impact comparisons identified as Appendices D and E to “clearly identify the impact of the Settlement on all customers.”³⁴

78. Appendix C assumed that the Mid Use Rate Group was already in existence at the time that Decision 2007-026 was released. Appendix D captured the impact of the creation of the Mid Use Rate Group by comparing the rates derived from two COSSs³⁵ using the current methodology approved in Decision 2007-026. One COSS included the Mid Use Rate Group

³³ Settlement Application, paragraph 22.

³⁴ Exhibit 105.

³⁵ Cost of Service Studies are used by ATCO to capture all of the data inputs and calculate the rates for the various Rate Groups.

while the second study was completed without the Mid Use Rate Group. Appendix D illustrated that customers with consumption amounts that would have placed them in the Mid Use Rate Group were forecast to have substantial rate decreases as the result of the creation of the Mid Use Rate Group.

79. Appendix E³⁶ demonstrated the impact of both the creation of the Mid Use Rate Group and the COSS changes provided for in the Settlement by comparing the rates between the Decision 2007-026 status quo (no Mid Use Rate Group and no COSS changes) and the one proposed in the Settlement COSS with a Mid Use Rate Group. Under this scenario, the Mid Use Rate Group also experienced rate decreases.

80. Table 2 below shows ATCO’s Appendix E revised rate impact comparisons.

Table 2. Revised Percentage Rate Increases by Rate Group

Rate Group	Rate Change Range ATCO South (%)	Rate Change Range ATCO North (%)
Low Use	-5.2 to 3.0	-6.3 to 3.6
Mid Use	-9.4 to -7.1	-4.9 to -3.2
High Use	-16.1 to -1.0	-19.4 to -5.3
Irrigation	1.9 to 9.7	N/A

81. A review of the Settlement Parties and interveners in the proceeding indicates that the customer groups impacted by the above rate changes were represented in either the negotiation or in the portion of the proceeding following the filing of the Settlement. In addition, the rate impacts of the Settlement and changes to the classifications and distribution of costs were the subject of a negotiation between ATCO and parties representing a broad range of impacted ratepayers. Further, the Commission observes that rate classes generally will experience rate decreases as a result of the Settlement.

82. The Commission accepts ATCO’s claim that the Settlement Parties are knowledgeable concerning the matters addressed by the Settlement. The Commission also notes that no party, other than the participants to the Settlement and PICA, submitted SIPs when afforded the opportunity to do so. The Settlement represents a unanimous agreement reached as a result of a successful negotiation reflecting a number of compromises of different interests and positions of the varied stakeholders. The Commission accepts that approval of the Settlement will result in regulatory cost savings to customers and greater regulatory efficiency than would a litigated process. The fact that the Settlement included representatives from a wide stakeholder group, that the stakeholder group active in the litigated portion of the proceeding was the same as that in the Settlement negotiation (with one addition - Calgary), that the Settlement was unanimous and unopposed, and that it will result in regulatory efficiencies, further support a finding that the Settlement is in the public interest.

4.3.4 The Settlement Taken as a Whole

83. The Commission must consider whether the effect of the Settlement, taken as a whole, will lead to rates and terms and conditions that are just and reasonable and in the public interest.

³⁶ Based on the 2009 revenue requirement as filed in the ATCO Gas 2008-2009 GRA Phase I First Compliance Filing.

A review of the general public interest considerations discussed in the previous section confirms that:

- the process employed for the settlement negotiations was fair;
- each rate class was represented in the settlement process;
- no party to the proceeding opposed the Settlement, subject to the timing of ATCO's review of weightings used in service costs classification and distribution dealt with in clause 7.1 of the Settlement Agreement;³⁷
- the rate and service impacts of the Settlement to the various rate classes are generally positive;
- the Settlement Parties turned their minds to the findings and directions of the Board in Decision 2007-026 in negotiating the Settlement as demonstrated by the fact that the updated COSSs filed in the Phase II Application were proposed as the basis for agreement on setting rates for 2010. These COSSs were carried out and the costs were functionalized, classified and distributed in a manner consistent with Decision 2007-026;
- the 2011 rates are to be determined on the basis of updates to the 2009 COSSs attached to the Settlement, which reflect the changes in methodology agreed to by the Settlement Parties and reviewed by the Commission in this Decision. Further, these COSS changes, as demonstrated in Appendix E,³⁸ generally show rate decreases for customers; and
- the Settlement is likely to result in regulatory costs savings to customers and greater regulatory efficiencies.

On this basis, after assessing each of the above public interest factors, the Commission considers that the Settlement taken as a whole appears to be in the public interest and will result in just and reasonable rates and terms and conditions of service.

5 INDIVIDUAL COMPONENTS OF THE SETTLEMENT

84. As discussed above, the Commission, in considering the public interest, has reviewed each of the material provisions of the Settlement in order to assess whether any of these material provisions, individually, are contrary to accepted regulatory practices, or could result in undue rate and/or service impacts to customers. The Commission recognizes that settlements, by their very nature, are the result of compromises and trade-offs among negotiating parties. Accordingly, in its assessment of the individual components or provisions of the Settlement, the Commission has not examined whether or not one component favours one party or another. In this section of the Decision the Commission will review the following material provisions of the Settlement:

- the term of the Settlement;
- the creation of the Mid Use Rate Group;
- the cost of service studies supported by the Settlement;

³⁷ PICA Argument dated March 22, 2010 at page 1.

³⁸ Based on the 2009 revenue requirement as filed in the ATCO Gas 2008-2009 GRA Phase I First Compliance Filing.

- the costs functionalized, classified and distributed to the various Rate Groups prepared in the Phase II Application which were debated in the litigated portion of the proceeding, and the subsequent adjustments made in the Settlement; and
- certain other material provisions included in the Settlement, including:
 - T&Cs, including Schedule “C” changes
 - rate design matters
 - deferral accounts
 - rates

85. Further, in Decision 2007-026 the Board identified several issues to be addressed in the next GRA Phase II application. The Commission will also consider these issues in the context of the Settlement. These issues include:

- classification of meter costs and a potential split of the Low Use Rate Group;
- distribution units used to distribute demand costs, including recognition of diversity in cost allocation;
- continued separation of the distribution mains and distribution services costs into two distinct functions;
- change of minimum distribution mains size from 26 mm to 42 mm; and
- continued use of ATCO North service line data as a proxy for ATCO South.

5.1 Term and Scope of the Settlement

86. The Commission has previously reviewed the term of the Settlement with respect to the fairness of the negotiation process and concluded that the 2010-2015 Settlement term and its expanded scope from the approval originally provided in Decision 2009-150 did not unduly impact the fairness of the negotiated settlement process.

87. The term of the Settlement also raises public interest considerations for the Commission. Section 4(1) of Rule 018 requires the consent of the Commission prior to parties attempting to negotiate rate and tariff matters. The purpose of obtaining consent of the Commission is to provide the Commission and parties an opportunity to review the matters proposed for the negotiation and to assess whether it is in the public interest to permit the requested negotiation on the full scope of matters proposed in the circumstances.

88. ATCO had applied for and obtained Commission approval in Decision 2009-150 for the negotiation of Phase II matters for the 2008-2009 test period but filed a settlement that also covered the years up to 2015. The Settlement also went beyond strictly Phase II matters and dealt as well with how rates will be determined for 2010. For the period 2011-2015, the Settlement deals with rate design matters only.

89. In a letter dated February 5, 2010, the Commission expressed concern with the timeframe of the Settlement and the fact that permission had not been obtained from the Commission for the expanded timeframe. The Commission proposed breaking the Settlement into two separate applications covering the 2008-2009 and 2010-2015 time periods respectively. However,

following the submissions from the Settlement Parties, the Commission, by letter dated February 23, 2010, accepted the position of the parties that the 2008-2015 timeframe of the Settlement be considered as a single indivisible application and that it should be accepted or rejected in its entirety. In its letter, the Commission stated:

1. While the Alberta Utilities Commission's (AUC or Commission) recognizes the regulatory efficiencies that may result from negotiated settlements, it has an obligation to assess the fairness of settlements in setting just and reasonable rates for all customers, including those that may not have been represented or fully represented during settlement negotiations. In keeping with this obligation, approval to negotiate settlements and the scope of such negotiations are required before rate negotiations may proceed. ...

3. In the circumstances the Commission is prepared to consider the settlement on the terms requested by the settlement parties and will require complete answers to the information requests previously provided to parties, including explanations of the regulatory, cost of service, rate design and public interest principles the settlement parties used in determining the terms of the settlement.

4. After the information request responses are received, the Commission will consider the settlement in its entirety and decide whether to accept or reject it accordingly. ...

90. After reviewing the information request responses provided by the Settlement Parties and the argument and reply filed by participants in the proceeding, the Commission continues to have public interest concerns with the time period covered by the Settlement and the fact that permission for an expanded scope and term was not first obtained from the Commission. The Commission notes that several regulatory initiatives are underway including the implementation of performance based regulation (PBR) for gas and electric distribution utilities in the province. PBR will provide superior incentives to improve productivity while maintaining or enhancing service quality. The Phase II cost of service relationships, rate design or terms and conditions of service issues covered in the Settlement would not reduce the incentives produced by PBR as PBR could simply be applied to a new rate structure. Further, ATCO Pipelines has been given certain approvals with respect to its integration proposal with NOVA Gas Transmission Ltd. in Decision 2010-228.³⁹ The implementation of integration has not yet occurred and its full impact on customers of ATCO Pipelines, including ATCO Gas, is not yet entirely known. The Settlement Parties themselves have recognized the potential material impact of the integration proposal in clause 8.2.1 of the Settlement. Lastly, clause 2.1 of the Settlement requires ATCO to file updated COSSs attached to the Phase II Application to determine rates for 2010 and, under clause 2.4 of the Settlement, ATCO must file an application by September 13, 2010 with respect to 2011 rates. In light of the above circumstances, given that the Settlement Parties have requested that the Commission approve or deny the Settlement in its entirety, the Commission considered turning down the Settlement with a direction to re-negotiate the Settlement on the basis that the term would expire on December 31, 2011 and to file the amended settlement agreement in conjunction with an application for 2010 and 2011 rates. Rate groups and rate design would of course remain in place after the end of 2011 until such time as the Commission approved an application to change them.

³⁹ Decision 2010-228: ATCO Pipelines 2010-2012 Revenue Requirement Settlement and Alberta System Integration (Application No. 1605226; Proceeding ID. 223) (Released: May 27, 2010).

91. Public interest factors militating against the above outcome include the fact that the regulatory processes associated with the Phase II Application and the subsequent Settlement have taken parties and the Commission to mid-2010 in respect of an application originally intended to finalize rates for 2008 and 2009. Rejecting the Settlement with the direction to re-negotiate the term would further delay the implementation of new rates reflecting the current COSSs and cause additional cost which is ultimately borne by ratepayers. Further, clause 8.1 of the Settlement provides for the re-opening of the Settlement if any Settlement Party or the Commission “views that a material modification to the existing Rate Groups or Rate Design is required.” The Commission takes comfort in the fact that it may direct ATCO to undertake a COSS or take other action during the term of the Settlement for the purpose of assessing whether a material modification to the rate groups or rate design may be required.

92. On balance, after assessing the above factors, the Commission considers that approval of the term and scope of the Settlement is in the public interest.

5.2 Creation of the Mid Use Rate Group

93. The creation of the Mid Use Rate Group in the Settlement follows earlier disagreements on cost allocation methodologies and the allocation of meter costs. In Decision 2007-026, the Board directed ATCO:

...to come forward at the next GRA Phase II proceeding with an analysis and evaluation of the methods mentioned by Calgary, AUMA/EDM and ABCOM. The Board believes it will be advisable for ATCO Gas to meet with these parties to discuss the details and definitions to assist in addressing the proposals. These proposals should be compared, on a pro and con basis and assessed with respect to the incremental benefits, if any, which could result over and above the benefits demonstrated through the implementation of the minimum system method for allocating meter costs. The analysis should be in sufficient detail to demonstrate the difference in cost to customers over different annual consumptions.⁴⁰

94. The Board direction was in the context of the Board’s concern that the minimum system method approved by it for allocating meter costs (in the absence of a better methodology supported by sufficient evidence) was insufficient to fully address the concerns with respect to lack of homogeneity in the Low Use Rate Group.

95. On October 8, 2008, ATCO sent a letter to interested parties stating:

This letter is intended to initiate the discussions with interested parties pursuant to the Board’s directive prior to the filing of the 2009 Phase II application. As an aid for discussion, ATCO Gas suggests that parties provide their proposals with respect to this matter in writing by November 2, 2008. The proposals at a minimum should clearly indicate how they would propose to split the existing Low Use Rate Group to address the allocation of meter costs between rate groups and the pros and cons of their proposals in comparison to the method currently approved by the Board. ATCO Gas would suggest that any numerical information from the 2007 Phase II proceeding could be used to illustrate or support the proposals made. Also to assist parties, ATCO Gas has attached Item 4.2 related to the Low Use Rate Group from that proceeding. Upon receipt of that

⁴⁰ Decision 2007-026, page 14.

information, ATCO Gas proposes to hold a workshop on this issue during the month of November. The intention is to file a Phase II application by the end of the year.⁴¹

96. The UCA responded to the ATCO October 8, 2008 letter,⁴² outlining a material difference between the minimum system method and the weighted customer method for the residential and nonresidential annual metering costs.

97. Direct Energy Marketing Limited suggested that a simpler and more effective approach to the allocation of meter costs would be to move the minimum threshold of Rate 3 and 13 customers down to 5,000 gigajoules (GJ) per annum from the current threshold of 8,000 GJ per annum, as only 1,369 customers would be affected.⁴³

98. ATCO stated that given the limited responses received to its October 8, 2008 letter it intended to hold a workshop on this matter as part of the proceeding to promote further discussion related to the Board directive.⁴⁴ Further analysis on this issue was provided by ATCO⁴⁵ and a variety of COSSs were also prepared by ATCO that reflected the rate groups proposed in the last Phase II by some interveners.⁴⁶

99. ATCO also discussed the reasons it believed making changes to the Rate Groups was not warranted.⁴⁷ Specifically, ATCO stated that the analysis provided in Tab M of the Application showed there was no issue with respect to how meter costs were currently being allocated to the Rate Groups.⁴⁸

100. During the litigated portion of the proceeding, additional rate group data was put on the record in responses to IRs and Intervener Evidence was filed with parties continuing to advance their positions. The workshop anticipated by ATCO on this issue was not held as the litigated portion of the proceeding was terminated when the Commission issued Decision 2009-150, granting ATCO's request to enter into a negotiated settlement process.

101. The Settlement Application and the Settlement included the creation of the new Rate Group – the Mid Use Rate Group. The Commission and PICA explored with the Settlement Parties the criteria and principles used in the creation of the Mid Use Rate Group in the IRs on the Settlement.⁴⁹

102. In its March 1, 2010 cover letter⁵⁰ to the IR responses, ATCO stated that the creation of the new rate group did not originate in the Settlement negotiations but rather stemmed from the concerns with respect to lack of homogeneity in the Low Use Rate Group expressed in the previous ATCO Gas Phase II proceeding. The change to the minimum system method approved by the Board in that proceeding from the weighted customer method previously used by ATCO for many years had been an attempt to partially address the homogeneity issue. ATCO further

⁴¹ Phase II Application, Tab N, pages 744-747.

⁴² Phase II Application, Tab N, pages 748-749.

⁴³ Phase II Application, page 750.

⁴⁴ Phase II Application, Section 3.0, page 10.

⁴⁵ Phase II Application, Tab M, pages 719-722.

⁴⁶ Phase II Application, Tab P, pages 767-1,399.

⁴⁷ Phase II Application, Section 6.0, pages 63-65.

⁴⁸ Phase II Application, Tab M, pages 719-722.

⁴⁹ Exhibits 113, 114, 115, 118, 119.

⁵⁰ Exhibit 113.

submitted that it had been informed that it was the only utility in North America that used a minimum system methodology to classify meter costs.

103. The Settlement Parties submitted that the principal purpose in splitting the Low Use Rate Group was to create rate groups that were more homogenous with a focus on the classification of meter costs.⁵¹ In discussions with the ATCO engineering group, it was determined that customers annually consuming below 1,200 GJ typically have different service lines and meter types than customers above 1,200 GJ. This formed the foundation of the creation of the Mid Use Rate Group. The primary consideration in the selection of the breakpoint at 1,200 GJ was that it was at the point where sizing for a meter and a service line would be both greater than the minimum pipe and meter size.

Commission Findings

104. Decision 2007-026 directed ATCO to address the issue of lack of homogeneity in the Low Use Rate Group, given the Board's reservations with respect to the minimum system method approved to classify meter costs. The Commission has reviewed the criteria and rationale given by the Settlement Parties above for the split of the old Low Use Rate Group into a new Low Use Rate Group and a Mid Use Rate Group in light of the concerns expressed by the Board.

105. Subject to the Commission's findings in the following subsections of this Decision on classification and distribution of meter, distribution main and distribution service costs, the Commission considers that the creation of the Mid Use Rate Group is a reasonable attempt to deal with the issues on homogeneity expressed by the Board and the Commission is satisfied that the introduction of the Mid Use Rate Group will result in rates that are just and reasonable. The Commission makes this finding having regard to the fact that the Settlement included the parties directly affected by these changes, that the Settlement was unanimous, and that PICA did not oppose the Settlement subject to the timing of ATCO's review of weightings used in services costs classification and distribution dealt with in clause 7.1 of the Settlement Agreement.⁵²

106. While the Commission has accepted for purposes of the Settlement Application the creation of the Mid Use Rate Group, the Commission directs ATCO in its next GRA Phase II application to review the continued use of, and the volume parameters for, the Mid Use Rate Group. Any further settlement application must also address the rationale for the continued designation of the Mid Use Rate Group.

5.3 Meters, Distribution Mains, and Distribution Services Cost of Service Study Methodology

107. Each of the Meters, Distribution Mains and Distribution Services functions are major cost categories for ATCO. Much of the associated costs cannot be directly classified and distributed⁵³ and, as such, the cost allocation of these functions has been the subject of some debate.

108. Decision 2007-026 sanctioned the separation of the previously combined Distribution Mains and Distribution Services functions and identified it for follow-up at the next GRA Phase II. ATCO included this separation in the Phase II Application and this was continued in the Settlement. The percentage of the costs classified and distributed to each rate group for each

⁵¹ Exhibit 114, AUC-SP-2(a) and (b).

⁵² PICA Argument dated March 22, 2010 at page 1.

⁵³ Phase II Application, Section 5.0.

of the Meters, Distribution Mains and Distribution Services cost categories changed as a result of the settlement negotiations.

109. The current classification and distribution methods used for each of meters, distribution mains and distribution services as well as methodology applied for in the Phase II Application, and the Settlement are summarized in Tables 3 and 4 below.

Table 3. Classification Methods (ATCO North and South)⁵⁴

Function	Currently Approved* (Decision 2007-026)	Phase II Application	Settlement Agreement
Distribution Mains			
Customer Costs	Minimum Plant -Outside Diameter (26 mm)	Minimum Plant -Outside Diameter (42 mm)	Negotiated at 35%
Demand Costs	Balance of the costs	Balance of the costs	Negotiated at 65%
Distribution Services			
Customer Costs	Minimum Plant -Outside Diameter (15 mm)	Minimum Plant -Outside Diameter (15 mm)	Negotiated at 100%
Demand Costs	Balance of the costs	Balance of the costs	N/A
Distribution Meters			
Customer Costs	Minimum System	Minimum System	Negotiated at 100%
Demand Costs	Balance of the costs	Balance of the costs	N/A

* The currently approved method for classification of costs to Customer and Demand for Distribution Mains and Services is the same as they were functionalized together.

Table 4. Distribution Methods (ATCO North and South)⁵⁵

Function	Currently Approved* (Decision 2007-026)	Phase II Application	Settlement Agreement
Distribution Mains			
Customer Costs	Average Customer	Average Customer	Average Customer
Demand Costs	Non-Coincident Peak	South - Non-Coincident Peak North - Peak Use	Non-Coincident Peak
Distribution Services			
Customer Costs	Average Customer	Average Customer	Average Customer x weighting factor
Demand Costs	Non-Coincident Peak	Non-Coincident Peak	N/A
Distribution Meters			
Customer Costs	Average Customer	Average Customer	Weighted Customer
Demand Costs	Non-Coincident Peak	Non-Coincident Peak	N/A

* The currently approved method for distribution of Customer and Demand Costs for Distribution Mains and Services is the same as they were functionalized together.

110. The Commission and PICA submitted IRs to the Settlement Parties on the principles used in determining the changes in classification and distribution of costs from those currently approved.

⁵⁴ Information for this table obtained from Decision 2007-026, section 5 of the Phase II Application and the Settlement.

⁵⁵ Ibid.

111. The Settlement Parties provided the percentages of costs classified and distributed to Distribution Mains, Distribution Services and Meters for each of the currently approved (in Decision 2007-026), the Phase II Application, and the Settlement. The numbers are tabulated in Tables 5, 6, 7 and 8 below.⁵⁶

Table 5. Percentages of Costs Classified to Distribution Mains

Cost Class	Currently Approved Mains and Services Combined (%)		Proposed in Phase II Application Mains Only (%)		Proposed in Settlement Mains Only (%)	
	North	South	North	South	North	South
Distribution Mains						
Customer	53.1	53.7	61.3	65.9	34.7	34.5
Demand	46.6	45.4	38.1	32.7	64.7	64.1
Commodity	0.3	0.9	0.6	1.4	0.6	1.4
Totals	100.0	100.0	100.0	100.0	100.0	100.0

Table 6. Percentages of Costs Classified to Distribution Services

Cost Class	Currently Approved Mains and Services Combined (%)		Proposed in Phase II Application Services Only (%)		Proposed in Settlement Services Only (%)	
	North	South	North	South	North	South
Distribution Service						
Customer	53.1	53.7	66.4	75.8	100.0	100.0
Demand	46.6	45.4	33.6	24.2	0.0	0.0
Commodity	0.3	0.9	0.0	0.0	0.0	0.0
Totals	100.0	100.0	100.0	100.0	100.0	100.0

Table 7. Percentages of Costs Classified to Distribution Meters

Cost Class	Currently Approved (%)		Proposed in Phase II Application (%)		Proposed in Settlement (%)	
	North	South	North	South	North	South
Distribution Meters						
Customer	63.0	71.2	63.1	71.2	100.0	100.0
Demand	37.0	28.8	36.9	28.8	0.0	0.0
Commodity	0.0	0.0	0.0	0.0	0.0	0.0
Totals	100.0	100.0	100.0	100.0	100.0	100.0

⁵⁶ The information provided in tables 5-8 are sourced from the Settlement Parties responses to Commission IRs (Exhibit 114). The basis the Settlement Parties used for the numbers they provided is the 2009 revenue requirement, as filed in the ATCO Gas 2008-2009 GRA Phase I First Compliance Filing. Note that the percentages listed under the currently approved column for the Distribution Mains and Distribution Services are combined amounts.

Table 8. Percentage of Costs Distributed to Mains, Services and Meters⁵⁷

AUC-SP-3(b)

ATCO Gas 2008-2009 GRA Phase II

Percentage of Distributed Costs by Rate Group for Distribution Mains, Distribution Services and Distribution Meters Functions

MAINS	Currently Approved %		Currently Approved with MU %		Proposed in Application %		Proposed in Settlement %	
	North	South	North	South	North	South	North	South
Low Use					93.9	92.8	75.3	76.3
Mid Use							13.9	10.4
High Use					6.1	6.7	10.8	12.7
Irrigation						0.5		0.6
					<u>100.0</u>	<u>100.0</u>	<u>100.0</u>	<u>100.0</u>
SERVICES	Currently Approved %		Currently Approved with MU %		Proposed in Application %		Proposed in Settlement %	
	North	South	North	South	North	South	North	South
Low Use					94.3	94.8	91.1	94.9
Mid Use							8.0	4.1
High Use					5.7	4.8	1.0	0.6
Irrigation						0.4		0.3
					<u>100.0</u>	<u>100.0</u>	<u>100.1</u>	<u>99.9</u>
MAINS & SERVICES	Currently Approved %		Currently Approved with MU %		Proposed in Application %		Proposed in Settlement %	
	North	South	North	South	North	South	North	South
Low Use	92.0	90.5	81.6	82.8	94.1	93.5	81.5	83.1
Mid Use			10.4	7.7			11.5	8.1
High Use	8.0	9.0	8.0	9.0	5.9	6.0	6.9	8.3
Irrigation		0.5		0.5		0.4		0.5
	<u>100.0</u>	<u>100.0</u>	<u>100.0</u>	<u>100.0</u>	<u>100.0</u>	<u>99.9</u>	<u>99.9</u>	<u>100.0</u>
METERS	Currently Approved %		Currently Approved with MU %		Proposed in Application %		Proposed in Settlement %	
	North	South	North	South	North	South	North	South
Low Use	93.7	94.0	85.1	88.8	93.8	94.0	77.6	82.9
Mid Use			8.6	5.2			19.2	13.5
High Use	6.3	5.7	6.3	5.7	6.2	5.7	3.2	2.9
Irrigation		0.3		0.3		0.3		0.7
	<u>100.0</u>	<u>100.0</u>	<u>100.0</u>	<u>100.0</u>	<u>100.0</u>	<u>100.0</u>	<u>100.0</u>	<u>100.0</u>

MU = Mid Use

112. In ATCO's March 1, 2010 cover letter to the Settlement Parties' IR responses to the Commission, ATCO requested approval for changes to three major cost functions: mains, services, and meters. ATCO stated that all other aspects of the 2009 COSS filed with the Settlement were similar to that approved in the previous Phase II proceeding, and the methodologies requiring approval were commonly used in other jurisdictions or have been previously used in this jurisdiction.⁵⁸

113. In the March 1, 2010 letter, ATCO also submitted:

With respect, the Settlement that is currently before the Commission should be assessed on a total basis, not on how each individual aspect of the Settlement was derived or determined.⁵⁹

⁵⁷ Exhibit 114, attachment to AUC-SP-3(b).

⁵⁸ Exhibit 113, page 3.

⁵⁹ Exhibit 113, page 5.

Distribution Mains

114. ATCO presently classifies Distribution Mains costs partially to Customer and partially to Demand. The classification percentages and method of distribution were changed under the Settlement. Clause 2.12 of the Settlement states:

Distribution Mains costs will be classified 35% Customer and 65% Demand and distributed on the basis of Average Customer and NCP Demand.

115. ATCO also stated in its March 1, 2010 letter:

The treatment of classifying Mains was also a subject of discussion at previous Phase II proceedings. Furthermore, ATCO Gas was directed to address the continuing use of 26 mm as the minimum pipe size for Mains. Evidence was provided by the UCA that provided numerous examples of what other jurisdictions use to classify Mains. There is no definitive methodology as each method has pros and cons. The SP agreed to classify Mains based on a factor that is within the range of reasonability.⁶⁰

116. The Settlement Parties confirmed that no change had been made to the method for distributing the Customer portion of Distribution Mains costs.⁶¹

117. ATCO uses “demand distribution units” to distribute the Demand portion of distribution mains and services. ATCO calculates two types of demand distribution units: Coincident Peak demand (CP) and Non Coincident Peak demand (NCP). CP is the maximum expected demand by rate group that occurs when the distribution system is at its peak demand. NCP is the maximum expected demand by rate group regardless of when the demand occurs. CP was used to distribute the Demand component of the Transmission costs and NCP was used to distribute the Demand component of all other functions including distribution mains, services and meters.

118. Although ATCO had proposed in its Phase II Application a new method (the “Peak Use method”) for distributing the Demand portion of Transmission and Distribution Mains costs for the North, this method was shown to be impractical at this time,⁶² requiring additional costs and generating results that were not significantly different from the NCP methodology.

119. The Settlement Parties agreed to maintain the NCP methodology in the Settlement with a commitment in clause 7.5 that ATCO would review whether the Peak Use method could be modified using other data in order to accommodate the Mid Use Rate Group.

120. In the Settlement, parties agreed to a change in the methodology for calculating CP and NCP. Clause 2.23 of the Settlement summarizes the agreement reached by the Settlement Parties:

⁶⁰ Exhibit 113, page 3.

⁶¹ Exhibit 114, response to AUC-SP-3.

⁶² Exhibit 107, Response to AUC-SP-3(f).

The Distribution Units used in the 2009 COSS will be as shown on page 25 of the 2009 COSS which is consistent with the methodology approved in Decision 2007-026 with the exception that the Demand Distribution Units for the North will be based on a design temperature of -40 Degrees Celsius. The design temperature will remain unchanged at -36 Degrees Celsius in the South.

Distribution Services

121. The currently approved rates and the Phase II Application used the minimum plant methodology to classify a certain percentage of the services costs as Customer and the balance of the costs as Demand. Average customers are used to distribute the Customer costs and NCP Demand is used to distribute the Demand costs. The Settlement changed the existing classification and distribution methodology. Clause 2.13 of the Settlement states:

Distribution Services costs will be classified 100% Customer and distributed on the basis of Weighted Customers as shown on page 36 of the 2009 COSS.

122. The Settlement Parties stated that the change in methodology to Weighted Customers⁶³ was agreed upon in the Settlement and the result of the negotiated settlement process. The Settlement Parties submitted that the Weighted Customer methodology was a recognized methodology used in other jurisdictions. The Settlement Parties stated:

The current approved and the original application used the minimum plant methodology that allocates a certain percentage of the services costs to Customer based on the Minimum Plant Study and the balance of the costs allocated to demand. Average customers are used to distribute the Customer costs and NCP Demand was used to distribute the Demand costs. In the Settlement, the parties agreed to change to a Weighted Customer methodology. In a Weighted Customer methodology, all costs are classified as Customer and distributed on a Weighted Customer basis which recognizes that service line costs for Low Use customers are less than service line costs for Mid Use and High Use customers.⁶⁴

Distribution Meters

123. The Settlement Parties' decision to use the Weighted Customer method for classifying and distributing meter costs to the Rate Groups marks a return to the method used previous to Decision 2007-026 and the abandonment of the Minimum System method for cost classification. ATCO said that it had been told was not used by any other utility in North America.⁶⁵

124. Clause 2.14 of the Settlement states:

Distribution Meter costs will be classified 100% Customer and distributed on the basis of Weighted Customers as shown on page 34 of the 2009 COSS.

125. The Settlement Parties submitted:

In the Settlement, the Parties agreed to change to a Weighted Customer methodology for the classification of meter costs. In a Weighted Customer methodology, all costs are

⁶³ This weighted customer methodology is not the same as the one used for distribution meters. It is average customers times a factor negotiated in the Settlement.

⁶⁴ Exhibit 114, response to AUC-SP-4.

⁶⁵ Exhibit 113, page 3.

classified as Customer and distributed on a Weighted Customer basis which recognizes that meter costs for Low Use customers are less than meter costs for Mid Use and High Use customers. The change from the currently approved and original proposed application to the Settlement was the result of the negotiated settlement process. The SP can confirm that the Weighted Customer methodology is a well recognized methodology used in other jurisdictions for the classification of meter costs.⁶⁶

Commission Findings

126. The Commission accepts these cost classifications and distributions based on the explanations provided.

127. While the Commission accepts the Settlement Application and provisions of the Settlement which change COSS classification and distribution methodologies previously established in Decision 2007-026, the Commission directs ATCO in its next GRA Phase II application to review each of these matters and indicate, with reasons, which methodologies ATCO considers will best result in just and reasonable rates that are not unjustly discriminatory on a going forward basis. Any further settlement application must also address the rationale for the methodologies selected.

5.4 Terms and Conditions of Service, Including Schedule “C” Charges.

128. ATCO filed Distribution Access Service and Distribution Service Connections T&Cs with the Phase II Application, which were corrected during the course of the proceeding and amended by the Settlement. Copies of the corrected and amended T&Cs are attached as [Appendix 4](#) and [Appendix 5](#) to this Decision. ATCO requested that the T&Cs become effective upon Commission approval of the Settlement.

129. In AUC-AG-24, the Commission advised that it had received concerns regarding ATCO’s timelines for custom distribution service installations and asked ATCO about its Custom Service Letter Agreement included as Schedule “D” to its Distribution Service Connections T&Cs, specifically the absence of any policies or procedures in place and the requirement in section 7.0 of the Custom Service Letter Agreement for a potential 50 percent deposit before any work will be done, with no associated documented service standards. ATCO advised in its IR response that each situation is unique and varies from simple, short installations to complex, longer installations. ATCO also submitted that Schedule “D” was not currently part of the T&Cs and, to that date ATCO had not entered into any of those custom agreements.

130. In paragraph 21 of the Settlement Application and clause 2.7 of the Settlement, ATCO reserved the right to file an application seeking an amendment to the T&Cs and/or Schedule “C” Service Line fixed customer contribution charges during the term of the Settlement.

131. Clause 3.1 of the Settlement refers to a revision to the T&Cs filed with the Phase II Application required as a result of ATCO’s response to R13-AG-11.⁶⁷ In the response to R13-AG-11, ATCO identified or agreed with the following changes to the T&Cs filed with the Phase II Application:

⁶⁶ Exhibit 114, response to AUC-SP-5.

- A second billing demand condition was imposed on the largest customers within the rate class, namely those customers were required to specify a nominated demand and ATCO retained the right to interrupt those customers if their demand exceeded the nominated demand. ATCO indicated that in practice it treated all High Use accounts the same and recommended that the clause titled “Nominated Demand” be removed from its Rate Schedules.
- ATCO identified three changes required to its Distributions Access Service T&Cs:
 - Article 6.1.2 (Qualification for Service) – ATCO has the right to discontinue service if certain conditions are not met, as defined in Distribution Access Service article 6.1.1. This right is subject to certain provisions in Distribution Access Service articles 7.3 and 13. The change proposed by ATCO was to add two additional articles [11.2(d) and 14.1(d)] that the cancellation right is subject to. Article 11.2(d) contains the provision that if a Retailer’s service is discontinued, provision of the affected service will be assumed by the Default Service Provider (DSP). Article 14.1(d) lists the events that constitute default by ATCO, a retailer or the DSP.
 - Article 11.2 (Maintaining Prudential Requirements) – ATCO proposed to add the following article, 11.2(g), “In the event of a default by a Retailer, the Company is entitled to recover as part of the Gas Distribution Tariff any costs not covered by a claim against the Retailer’s security under section 9 of the Natural Gas billing Regulation AR 185/2003 as amended from time to time.”
 - Article 14.1 (Events of Default) – ATCO proposed to amend article 14.1(d) (amended portion underlined):
 - (d) fails to pay the other party (“Non-Defaulting Party”) when payment is due, or to satisfy any other material obligation under these Terms and Conditions or the Distribution Access Service Agreement including, without limiting the generality of the foregoing, fulfilling the prudential requirements as set forth in Article 11, in accordance with these Terms and Conditions, and fails to remedy the failure or satisfy the obligation, as the case may be, within three (3) Business Days after receipt of written notice thereof from the Non-Defaulting Party;

132. In addition to these changes, section 6 of the Settlement detailed wording additions and deletions on the rate schedules to reflect several adjustments provided for in the Settlement:

- Criteria for the switching of customers between the various Rate Groups:
 - A Low Use customer that consumes more than 1200 GJ of natural gas annually but no more than 8000 GJ annually for two consecutive years will automatically be switched to the Mid Use rate group without notice. ATCO Gas will notify customers’ retailers of any such rate switches.
 - A Mid Use customer that consumes less than 1201 GJ of natural gas annually for two consecutive years will automatically be switched to the Low Use rate group without notice. ATCO Gas will notify customers’ retailers of any such rate switches.

- Once a customer is billed under the High Use rate schedule, they will only be switched back to the Low or Mid Use rate schedule at the request of the customer. Only one switch per year will be allowed, and the effective date for the switch will be determined by ATCO Gas.
- Reflection of the change to Gas Day (as per section 4 of the Settlement) in the “Determination of Billing Demand” section of the High Use Rate Group schedule as follows from clause 6.5 of the Settlement:
 - The Billing Demand for each billing period shall be the greatest amount of gas in GJ delivered in any Gas Day (i.e. 8:00 am to 8:00 am) during the current and preceding eleven billing periods provided that the greatest amount of gas delivered in any Gas Day in the summer period shall be divided by 2.
 - Provided that for a Customer who elects to take service only during the summer period, the Billing Demand for each billing period shall be the greatest amount of gas in GJ in any Gas Day in that billing period.
 - In the first contract year, the Company shall estimate the Billing Demand from information provided by the Customer.

133. The T&Cs also included a reference error and a labeling error identified by ATCO in its response to AUC-SP-6. These errors were in article 9.3 of both the Distribution Access Service T&Cs and the Distribution Service Connections T&Cs.

134. Clauses 3.2 and 3.3 of the Settlement address increases made to the Schedule “C” charges which includes such items as service line installations, meter re-locations, customer contributions for service lines, reinstatement of service. The Settlement proposed a phase-in over three years to minimize customer impact, and also proposed deferral account treatment. The response to AUC-SP-8 described the principles used in determining the increases to the Schedule “C” charges as follows:

ATCO Gas used similar costing principles to those that were approved in Decision 2007-026 to develop new service line rates. The increase in recovery rates is a result of increased costs to provide this service. However, as discussed in Clause 3.3 of the Settlement, the Service Line fixed charge component is to be phased in over a three year period to transition the impact on customers. This is similar to the transitioning of rural connection charges that was approved in ATCO Gas’ last Phase II proceeding.

Commission Findings

135. The Commission has reviewed the proposed changes to the T&Cs, including the increased Schedule “C” charges, and accepts ATCO’s explanation for the changes. The Commission also notes that the Settlement addresses and approves the changes to the T&Cs, including the Schedule “C” charges, and the implementation date. The Commission accepts the changes to the T&Cs and the Schedule “C” charges on the basis of the explanation for the changes provided. The Commission will however be monitoring the impact of these changes, and particularly the Low and Mid Use Rate Group switching through its Public Affairs complaints function.

136. The Commission notes that the Schedule “C” changes will be phased in over a three-year period in order to minimize customer impact. As part of this plan the Settlement Parties proposed deferral account treatment for these costs. The Commission will deal with the issue of deferral accounts later in this Decision.

137. The Commission realizes that, although Schedule “C” charges are included as part of the T&Cs, the charges result in revenues that are contributions-in-aid-of-construction and therefore directly impact the revenue requirement. It would be appropriate to discuss and approve the estimated revenues generated by such charges during the Phase I of a GRA. Accordingly, the Commission directs ATCO to submit and support the estimated revenues attributable to Schedule “C” charges and any proposed changes in its next GRA Phase I application.

138. The Commission is concerned about the overall lack of policies and procedures for the timelines underlying custom installations where a 50 percent upfront deposit is required.⁶⁸ Although the Commission recognizes that each custom job is different and can be difficult to estimate, it expects ATCO to be proactive in dealing with customers who have made a 50 percent contribution by providing them with timely and reliable information regarding the estimated job start time and the estimated length of time to completion. The Commission directs ATCO to monitor and report to the Commission at its next GRA Phase I the number of custom customer contribution installations done and the number of cases where a 50 percent deposit was required.

139. The Commission directs ATCO to place a notice on its website that its Distribution Access Service and Distribution Service Connection T&Cs have been updated and update its website with the new T&Cs.

140. The Commission also directs ATCO to amend its Retailer Guide and all other public documentation to reflect the changes made to the T&Cs as approved by this Decision as soon as possible.

5.5 Rate Design Matters

141. In addition to the creation of a Mid Use Rate Group, there were several other rate design changes agreed to in the Settlement. Section 4 of the Settlement provides for these adjustments to the rate design:

- a reduction in the 2009 forecast billing demand for the High Use Rate Group to reflect the change to a Gas Day billing demand;
- adjustments to total revenue between the High Use Rate Group and the Low Use, Mid Use and Irrigation Rate Groups effective January 1, 2011 of \$176,000 for ATCO South and \$278,000 for ATCO North;
- the setting of the Mid Use Rate Group fixed charge at the same level as the Low Use Rate Group, effective January 1, 2011; and
- basing the Irrigation Rate Group fixed charge on 65 percent of Customer allocated costs effective January 1, 2011.

⁶⁸ Exhibit 029, Response to AUC-AG-24.

Commission Findings

142. The Commission accepts these adjustments and notes that the impact of these changes is not material to the Rate Groups. On this basis the Commission approves the negotiated changes to rate design.

5.6 Deferral Accounts

143. Clauses 2.11, 3.3 and 5.2 of the Settlement refer to items that the Settlement Parties agree should qualify for deferral account treatment. Clause 2.11 deals with incremental operating costs related to the split of the Low Use Rate Group and the creation of the Mid Use Rate Group. Clause 3.3 addresses the phasing in, as per Attachment 2 to the Settlement, over three years of the changes to the Schedule “C” charges. Both clauses 2.11 and 3.3 propose that the deferral accounts be addressed at ATCO’s next GRA. Clause 5.2 deals with the outstanding matters related to placeholders and the removal of the Carbon-related assets from utility service.

Commission Findings

144. The Board considered certain factors when evaluating the appropriateness of a deferral account. In Decision 2003-100,⁶⁹ it looked to four factors to guide its decision-making on the facts of that proceeding. These factors were most recently discussed by the Commission in Decision 2010-189.⁷⁰ Those factors are:

- materiality of the forecast amount;
- uncertainty regarding the accuracy and ability to forecast the amount;
- whether or not the factors affecting the forecast are beyond the utility’s control; and
- whether or not the utility is typically at risk with respect to the forecast amount.⁷¹

These factors are referred to as the four factors.

145. In Decision 2003-100, the Board, when examining the merits of an application for a deferral account on the facts of that proceeding, took the view that “deferral accounts should not be for the sole benefit of either the company or the customers.”⁷² Deferral accounts, rather, should “provide a degree of protection to both the Company and the customers from circumstances beyond their control,” and hence “symmetry must exist between costs and benefits for both the Company and its customers.”⁷³ The Board also noted that it expected that “the individual mechanisms involved in the use of each deferral account should be applied in a consistent and fair manner in both test years and non-test years.”⁷⁴ This is referred to as the symmetry factor.

⁶⁹ Decision 2003-100: ATCO Pipelines 2003/2004 General Rate Application – Phase I (Application No. 1292783) (Released December 2, 2003).

⁷⁰ Decision 2010-189: ATCO Utilities Pension Common Matters (Application No 1605254, Proceeding ID. 226) (Released April 30, 2010) page 17.

⁷¹ Decision 2003-100, page 116.

⁷² Originally from Decision 2000-9: Canadian Western Natural Gas Company Limited 1997 Return on Common Equity and Capital Structure, and 1998 General Rate Application (Application Nos. 980413 and 980421) (Released March 2, 2000), page 148.

⁷³ Ibid.

⁷⁴ Ibid.

146. The deferral accounts proposed in this proceeding will be examined on their overall merits, as the Board and Commission have done in the past on a case-by-case basis. The Commission appreciates that this is a Settlement and with respect to clauses 2.11 and 5.2, specific support was not provided as to the reasons Settlement Parties agreed these items should qualify for deferral account treatment, Nonetheless, the Commission considers the four factors plus the symmetry factor as instructive for the purpose of this evaluation.

147. With respect to the materiality factor, the Commission considers that not enough information was provided during the course of the proceeding to explicitly identify the materiality of the incremental operating costs related to the split of the Low Use Rate Group and the creation of the Mid Use Rate Group. However, the Commission is satisfied that costs will be incurred in effecting the change and that it is proper for ATCO to be able to recover its reasonable costs. With respect to the outstanding matters related to placeholders and the removal of the Carbon-related assets from utility service these costs are the subject of other proceedings before the Commission and are likely to be substantial in nature. Cost forecast information was provided for the phasing in over three years of the changes to the Schedule “C” charges⁷⁵ and, given the parameters of the Settlement which defer the impact of these Schedule “C” charges to customers, the Commission considers that they should therefore also be approved for deferral account treatment.

148. In consideration of the other factors, the Commission finds that the proposed deferral accounts deal with new and outstanding issues where there is uncertainty regarding the accuracy and ability to forecast the amount and they will provide protection for both the customer and the utility.

149. Accordingly, this uncertainty and risk for both ATCO and ratepayers evaluated in light of the four factors plus the symmetry factor leads the Commission to conclude that, under the circumstances, it should accept the use of the deferral accounts. The accounts are for the incremental operating costs related to the creation of the two new rate groups (Settlement clause 2.11), the phasing in over three years of the changes to the Schedule “C” charges (Settlement clause 3.3) and the outstanding matters related to placeholders and the removal of the Carbon related assets from utility service (Settlement clause 5.2).

150. The Commission also finds it notable that the Settlement Parties support these items for deferral account treatment. The Commission therefore approves the creation of deferral accounts for the items discussed in clauses 2.11, 3.3 and 5.2. In addition, the Commission directs ATCO to address the disposition of deferral accounts related to clauses 2.11 and 3.3 and the status of the deferral account related to clause 5.2 in its next GRA Phase I.

5.7 Rates

151. In this section the Commission looks at how the Settlement addresses the determination of rates going forward and whether or not rate shock may result from changes to rate design or COSS cost allocations.

152. The Settlement spans the time period from 2008-2015, made up of three distinct time periods – 2008 to 2009, 2010, and 2011 to 2015. Paragraphs 14 to 21 of the Settlement

⁷⁵ Schedule “C” charges phase-in schedule provided in Attachment 2 to the Settlement.

Application and clauses 2.1 to 2.8 of the Settlement address issues related to rates during the period covered by the Settlement.

2008-2009

153. Clause 2.1 of the Settlement confirms that the existing rate structure, as approved in Decision 2007-026 will be used without changes for the purposes of determining final rates for 2008 and 2009.

154. ATCO also stated in clause 2.1 of the Settlement that it may be required to file for rate riders to address the finalization of any changes to the 2008/2009 revenue requirements arising from the GRA Phase I compliance filing process and to address finalization of placeholders, deferral account reconciliations, the removal of the Carbon assets or other adjustments.

155. ATCO's 2008-2009 GRA Phase I was complete with the issuance of Decision 2010-025,⁷⁶ based on ATCO's second compliance filing. ATCO outlined in paragraph 16 of the Settlement Application and clause 5.1 of the Settlement that it will file an application in 2010 seeking the finalization of rates for the years 2008 and 2009.

Commission Findings

156. The Commission approves the provisions of clause 2.1 of the Settlement which confirms that the existing rate structure as approved in Decision 2007-026 will be used without changes for the purposes of determining final rates for 2008 and 2009.

157. Commission notes that Decision [2009-045](#)⁷⁷ was issued on an interim basis to collect a portion of the revenue requirement shortfall for the 2008-2009 test years. The rate riders "G" for the north and "J" for the south were implemented May 1, 2009. They were designed to collect the shortfall by December 31, 2009. The Commission did not stipulate an end date in the Rates Schedules for the riders, which appears to have resulted in ATCO continuing to apply the riders during 2010. The Commission also recognizes that events overtook the opportunity and ability for ATCO to complete a rate filing to be effective January 2010 that would have reconciled with the Commission approved 2009 revenue requirement. The 2009 revenue requirement was not finally approved until January 13, 2010 with the issuance of Decision 2010-025. ATCO is directed to reconcile the revenue collections and final approved revenue requirement amounts subject to any outstanding placeholders when it makes application for 2010 rates as discussed below.

2010

158. In paragraph 14 of the Settlement Application, ATCO notes that the new rate design, including the designation of the Mid Use Rate Group and COSS methodological changes, are not proposed to occur until January 1, 2011. Paragraph 15 of the Settlement Application refers to the provisions of the Settlement dealing with rates and rate design for 2010. Paragraph 15 states:

As discussed in Clause 2.1 of the Settlement, once the final 2008/2009 revenue requirement forecast has been approved through the GRA Compliance Proceeding

⁷⁶ Decision 2010-025: ATCO Gas 2008-2009 General Rate Application Phase I Second Compliance Filing (Application No. 1605411, Proceeding ID. 294) (Released: January 13, 2010).

⁷⁷ Decision 2009-045: ATCO Gas 2009 Interim Rates (Application No. 1603336, Proceeding ID. 156) (Released: April 24, 2009).

ID. 294, ATCO Gas will file updated COSS for each of the North and the South based on the Tab A and Tab B COSS provided in the 2009 Phase II Application. The updated Tab A and Tab B COSS will be used to determine the rates for the year 2010. The purpose of the application will be to establish rates for the year 2010. The COSS methodology in Tab A and Tab B are consistent with the findings of the Board in Decision 2007-026, ATCO Gas' last Phase II decision.

159. Paragraph 15 contemplates the filing of a separate application to finalize 2010 rates using the existing rate structure once this Decision is issued and the 2009 Phase I GRA Compliance process is completed. The Phase I compliance process was completed with the issuance of Decision 2010-025 on January 13, 2010. ATCO also stated that it may also be required to file for rate riders to address finalization of any difference between what was recovered for the years 2008 and 2009 and the final approved revenue requirement, the finalization of any outstanding placeholders or the timing of the removal of Carbon natural gas storage facility assets from rate base, and to address any timing issues related to the implementation of the final rates for 2010.

Commission Findings

160. The Commission agrees with the Settlement Parties that the existing rate structure approved in Decision 2007-026 should be maintained for 2010 and observes the parties do not appear to contemplate the filing of a 2010 GRA Phase I, but rather refer instead to 2010 rates resulting from updated COSSs supplemented by rate riders where necessary. The Commission defers any decision on the final 2010 rates until it receives the 2010 rate application referred to in clause 2.1 of the Settlement.

2011-2015

161. The rate structure changes discussed earlier in this Decision, including the designation of the Mid Use Rate Group, are proposed to take effect January 1, 2011. In clause 2.3 of the Settlement, ATCO committed to update the 2009 COSS attached to the Settlement for the final 2009 revenue requirement to be approved through the 2008/2009 GRA Compliance process. The 2009 COSS attached to the Settlement reflects the COSS changes required by the Settlement. In the event that other outstanding matters related to placeholders and/or the removal of the Carbon assets are finalized by August 31, 2010, ATCO committed to update the 2009 COSS for those matters. This updated final 2009 COSS is intended by the Settlement Parties to be used to set 2011 rates. ATCO Gas further stated in paragraph 20 of the Settlement Application:

ATCO Gas reserves the right to file amendments to the rates generated by the Settlement for matters not contemplated by the Settlement, such as the finalization of outstanding placeholders, the removal of the Carbon assets, or the filing of a General Rate Application by ATCO Gas. However, the Parties to the Settlement will not seek an alteration to the Final 2009 COSS principles for any application contemplated by Clause 2.5 of the Settlement that is filed during the Term of the Settlement. The Parties agree, however, that adjustments to the revenue to cost ratios may be required.

162. Clause 2.4 of the Settlement requires ATCO to file the final 2009 COSS and resultant 2011 rates for Commission approval by September 13, 2010. Appendix E, filed with ATCO's January 26, 2010 letter⁷⁸ to the Commission and updated in the response to AUC-AG-26⁷⁹

⁷⁸ Exhibit 105.

illustrates the rates that will come into effect on January 1, 2011 and the increases/decreases in annual costs by customer segment in GJ. These rates are based on Decision 2009-109 and other current inputs and do not yet reflect any adjustments for placeholders or other items that may occur in the future as discussed above.

163. Subject to the terms of the Settlement, the rate design contemplated to take effect on January 1, 2011 is intended to remain in place for the duration of the settlement period which ends December 31, 2015.

Commission Findings

164. The Commission wishes to make it clear that the settlement post 2010 deals exclusively with Phase II rate design issues and does not relate to revenue requirement or to final rates after 2010. In particular, nothing in this Decision is intended to relate to the overall level of rates allowed from time to time under a PBR framework.

165. In Table 9 below, the Commission provides a rate impact table using representative data selected from that provided by ATCO in the response to AUC-AG-26. Based on the inputs and assumptions as currently provided, the Commission is of the view that rate shock is not occurring as a result of the new rate design to any rate group. The Commission is mindful however that, given the caveats provided by ATCO in the Settlement and discussed earlier in this Decision, changes could occur and that these changes could be material. The Commission reminds parties that each rate or rate rider application in the future will be considered on its own merits and in the context of public interest factors including rate shock.

166. As can be observed from the table, for customers in the north, the largest increase is 2.4 percent between 2010 and 2011 for Low Use Customers, which is preceded by a reduction of 9.5 percent between 2009 and 2010. On the other hand, customers in the south will encounter an increase between 2009 and 2010 before receiving an offsetting decrease between 2010 and 2011. The Irrigation Rate Group receives increases over both periods. The increases range from 2.5 percent to 8.5 percent between 2009 and 2010, with the average customer, using 808 GJ per year, experiencing about a 6.6 percent increase. The UCA noted that the irrigation load factor for 2009 had declined slightly since the 2007 COSS, based on updated load data, but more importantly, the Carbon costs, which were classified as commodity costs in the 2007 COSS, have been removed from the 2009 rate base and COSS. The UCA observed that this latter change impacted the low load factor Irrigation Rate Group more than the other rate groups. As a higher portion of total costs are demand driven, lower load factor customers will see a higher percentage increase than other rate classes. The revenue to cost ratio for the irrigation class is 100.2 percent as shown in Attachment 1, Schedule A to the Settlement.⁸⁰ The Commission notes that this is the highest ratio of the Rate Groups and is the same as the Mid Use Rate Group in both the north and south. The lowest ratio is 98.6 percent for the High Use Rate Group in the north. The Commission considers the results, which show the revenue to cost ratios for all Rate Groups to be close to 100 percent, to be just and reasonable and not indicative of rate shock. Accordingly, the Commission approves the splitting of the Low Use Rate Group and the

⁷⁹ Exhibit 118, response to AUC-AG-26, numbers updated based on Decision 2010-025: ATCO Gas 2008-2009 General Rate Application Phase I Second Compliance Filing (Application No. 1605412) (Released: January 13, 2010)

⁸⁰ Exhibit 119, response to AUC-UCA-12(a).

designation of the Mid Use Rate Group and the COSS methodological changes required by the Settlement and reflected in the 2009 COSS attached to the Settlement, effective January 1, 2011.

Table 9. Impact of Rate Changes

	Column 1	Column 2	Column 3	Column 4	Column 5
ATCO Gas North					
Annual GJ	Annual Cost 2009 Interim Rate (\$)	Annual Cost 2010 Settlement (\$)	Change (%) Col 2 vs 1	Annual Cost 2011 Settlement (\$)	Change (%) Col 4 vs 2
Low Use					
120	459	418	-9.5	428	2.4
200	567	527	-7.1	526	-0.2
400	838	798	-4.8	769	-3.6
800	1,381	1,342	-2.8	1,256	-6.4
1,200	1,923	1,885	-2.0	1,743	-7.5
Mid Use					
1,201	1,925	1,886	-2.0	1,803	-4.4
1,600	2,466	2,428	-1.5	2,308	-4.9
2,000	3,008	2,971	-1.2	2,814	-5.3
4,000	5,720	5,687	-0.6	5,346	-6.0
8,000	11,144	11,119	-0.2	10,410	-6.4
High Use					
8,001	9,467	9,593	1.3	8,923	-7.0
15,000	17,462	17,737	1.6	15,340	-13.5
35,000	40,307	41,009	1.7	33,677	-17.9
100,000	114,553	116,641	1.8	93,271	-20.0
400,000	457,227	465,712	1.9	368,325	-20.9
ATCO Gas South					
Low Use					
120	347	350	0.9	358	2.3
200	426	432	1.4	434	0.5
400	624	638	2.2	623	-2.4
800	1,019	1,049	2.9	1,000	-4.7
1,200	1,414	1,460	3.3	1,378	-5.6
Mid Use					
1,201	1,415	1,461	3.3	1,351	-7.5
1,600	1,810	1,871	3.4	1,719	-8.1
2,000	2,205	2,282	3.5	2,087	-8.5
4,000	4,181	4,338	3.8	3,929	-9.4
8,000	8,133	8,450	3.9	7,613	-9.9
High Use					
8,001	6,140	6,594	7.4	6,485	-1.7
15,000	11,286	12,143	7.6	11,094	-8.6
35,000	25,991	28,000	7.7	24,263	-13.3
100,000	73,782	79,537	7.8	67,061	-15.7
400,000	294,358	317,397	7.8	264,592	-16.6
Irrigation					
200	402	418	4.0	450	7.7
1,000	1,112	1,190	7.0	1,232	3.5
2,000	1,999	2,155	7.8	2,210	2.6
4,000	3,773	4,085	8.3	4,166	2.0
8,000	7,321	7,945	8.5	8,078	1.7

5.8 Settlement Re-Opener and Term Extension Clauses

167. Clause 1.2 of the Settlement includes a provision to extend the term beyond the year 2015 and section 8 of the Settlement includes several re-opener clauses. Clause 8.1 provides the opportunity for the Commission or any Settlement Party to re-open the Settlement should it be of the view that a material modification to the existing Rate Groups or rate design is required. Clauses 8.2 through 8.5 refer to other re-opener events including material changes in circumstances such as the proposed integration of NOVA Gas Transmission Limited and ATCO Pipelines and require at least one other Settlement Party to agree with the party initiating the re-opener before the Settlement will be re-opened. Clauses 8.6 and 8.7 refer to the termination of the Settlement at the end of its term and state that, upon termination, the rate structure in existence at that time will remain in place until a decision is issued by the Commission that alters that rate structure.

Commission Findings

168. The Commission does not find any of the re-openers to be unusual or inappropriate but cautions that an approval by the Commission of the Settlement does not include the approval of an agreement of the parties to extend the term as contemplated in clause 1.2. The Commission notes that clause 9.12 requires the consent of the Commission prior to any extension of the term of the Settlement.

5.9 Conclusion on Individual Components of the Settlement

169. Given the above analysis in respect of the individual material components of the Settlement, the Commission is of the view that, other than the decision to negotiate for a period for which the Settlement parties weren't authorized, no component appears contrary to accepted regulatory practices, or could result in undue rate and service impacts to customers. Given the unique circumstances of this case and as described in the discussion on public interest earlier in this Decision, the Commission has decided to waive its concern with the lack of approval obtained by the Settlement Parties to negotiate beyond 2009.

170. The Commission also considers that no component provides the Commission with a sufficient degree of concern to conclude that it would merit rejecting the Settlement as not being in the public interest.

6 PICA CONCERN WITH CLAUSE 7.1 OF THE SETTLEMENT

171. In Argument, PICA raised a concern about a commitment made by ATCO in clause 7.1 of the Settlement. Clause 7.1 states:

ATCO Gas agrees to review the weighted customer information for each Rate Group used for the classification and distribution of Distribution Service costs to determine whether any improvements to the allocation methodology can be made. ATCO Gas will provide an update on the progress of this work to the Parties by no later than December 31, 2011. The Parties acknowledge that the methodology used for the classification and distribution of Distribution Services costs in the 2009 COSS is subject to the provisions of Clause 2.6 of the Settlement.

172. PICA's concern relates to a submission made in response to AUC-SP-4 (c), (d), and (e).⁸¹ In Argument, PICA stated:

With regard to the method used to distribute services costs, AG states:

In the Settlement, the parties agreed to change to a Weighted Customer methodology. In a Weighted Customer methodology, all costs are classified as Customer and distributed on a Weighted Customer basis which recognizes that service line costs for Low Use customers are less than service line costs for Mid Use and High Use customers.

Given the undertaking by ATCO Gas to review the weightings used in services costs distribution, PICA infers the data on services may have been deficient in some respects at the time of the negotiations. PICA notes from AUC.SP-3(b), Attachment, there is a significant shift in the services allocation between customer classes. In view of this shift and of the significance of services costs in relation to the overall cost of service, PICA recommends any uncertainty over the appropriate weighting of services be rectified sooner, rather than later. Therefore, PICA recommends ATCO Gas be required to complete the weighted customer information for each Rate Group used for the classification and distribution of Distribution Service costs by December 31, 2011, and, to the extent material, reflect any revisions in the weightings in the go forward cost of service study and rate design. PICA submits Clause 7.1 of the Settlement be amended to reflect this further requirement.

173. In Reply Argument, the Settlement Parties disagreed with the PICA request to advance the timeline:

The SP submits that once the work related to services is completed at December 31, 2011, the SP will determine what, if any, action is required. It is possible that the determination will be made that further work is required, as an insufficient amount of data may have been gathered by December 31, 2011 on which to base any recommendations.

The SP also submits that in any event Clause 8.1 of the Settlement provides any Party to the Settlement, or the Commission, with the ability to re-open the Settlement if a material modification to the existing Rate Groups or Rate design is required.

The SP submits that not only is it not necessary to amend Clause 7.1 of the Settlement, but it would also be inappropriate, as the Settlement reflects the ultimate positions of the Parties as a package Settlement. The Commission should approve the Settlement as filed.

Commission Findings

174. While the Commission acknowledges PICA's concern, the Commission is not persuaded that this concern merits a rejection of the Settlement on this basis. The Commission also does not consider this concern as meriting a re-opening of the Settlement as provided in clause 8.1 of the Settlement at this time. The Commission does expect, however, ATCO and the Settlement Parties to diligently pursue this matter and to bring forward any required changes to the allocation methodology for Distribution Services Costs in a timely manner.

⁸¹ Exhibit 114.

7 CONCLUSION ON THE SETTLEMENT

175. Although PICA raised an objection in its January 14, 2010 letter, the Commission is mindful that PICA filed argument and, subject to the concern on the allocation methodology for Distribution Service Costs discussed above, did not object to the formation of the Mid Use Rate Group, to the COSS methodological modifications effective January 1, 2011 or to the Settlement as a whole. Therefore, no parties are currently objecting to the Settlement and all other parties, the UCA, CCA, R13 Group, and Calgary, support it.

176. The Commission has found the Settlement process to have been fair and that the Settlement taken as a whole to be in the public interest and that none of the material provisions, individually, are contrary to accepted regulatory practices, or could result in undue rate and service impacts to customers.

177. Based upon the evidence before the Commission and as a result of the above analysis, the Commission finds that the:

- (a) negotiated settlement process was fair; and
- (b) the Settlement is fair and reasonable and it forms the basis for developing rates and terms and conditions of service which are fair and reasonable and in the public interest.

178. Accordingly, the Commission approves the Settlement as filed, in its entirety and contained in Appendix 3 to this Decision

8 DIRECTIONS FROM DECISION 2007-026 AND DECISION 2007-059

Decision 2007-026

179. A number of Directions were given to ATCO in the previous GRA Phase II decision to be discussed in its next GRA. The pertinent Directions are listed and discussed in this Section.

Direction 1

180. The following Direction relating to COSS methodologies proposed by Calgary appeared at page 14:

However, the Board also directs ATCO Gas to come forward at the next GRA Phase II proceeding with an analysis and evaluation of the methods mentioned by Calgary, AUMA/EDM and ABCOM. The Board believes it will be advisable for ATCO Gas to meet with these parties to discuss the details and definitions to assist in addressing the proposals. These proposals should be compared, on a pro and con basis and assessed with respect to the incremental benefits, if any, which could result over and above the benefits demonstrated through the implementation of the minimum system method for allocating meter costs. The analysis should be in sufficient detail to demonstrate the difference in cost to customers over different annual consumptions.

181. In its Phase II Application ATCO provided an analysis and discussion in section 6.3 and Tab M as directed. However, the suggested meeting did not take place as such was superseded by settlement negotiations. In the Settlement it was agreed that, rather than using a minimum

system for allocation of meter costs, a weighted customer method would be used. The Commission accepts that ATCO has complied with this Direction.

Direction 7

182. The following Direction appeared at page 32:

While ATCO Gas claims that the costs expected to be included in the Load Balancing and Load Settlement functions will be fixed, the Board directs ATCO Gas to provide further explanation in this regard. In particular, the Board is interested in understanding whether ATCO Gas expects any variable cost component associated with the DFSS and GasTIS and any other costs functionalized to these functions. This explanation should be provided in the future proceeding wherein ATCO Gas requests approval for DFSS and GasTIS related costs.

183. ATCO provided a response and discussion in section 5.2.6 and Tab M of the Phase II Application, as directed. The Commission considers ATCO has complied with this Direction.

Direction 8

184. The following Direction appeared at page 44:

As a consequence of the reality of the evolution of the distribution system and the increasing difficulty to distinguish feeder mains from mains, the continuing use of revenue requirement terms and cost allocations terminology that distinguishes between feeder mains versus mains becomes questionable. Therefore, ATCO Gas is directed to provide an assessment on whether it is still appropriate to continue to separately identify feeder mains in its capital program and/or whether a modified term and definition should be used. This assessment should be filed as part of its next GRA.

185. In its Phase II Application, ATCO provided its response to the Direction in Tab M. The Commission considers ATCO has complied with this Direction.

Direction 9

186. The following Direction appeared at page 60:

In response to PICA's submission that it was appropriate to use 42 mm pipe in minimum system or zero intercept studies for classification of distribution mains, since 42 mm pipe represented the commonly used minimum size pipe under ATCO Gas' current planning assumptions, the Board directs ATCO Gas to file, as part of its next GRA Phase II, its views on why 26 mm pipe continues to be the appropriate size pipe to use as the minimum system pipe in its Mains Minimum Plant OD Method.

187. ATCO provided a response to this Direction in Tab M and section 5.6.11 of its Phase II Application. The Commission considers ATCO has complied with this Direction. However, since the Settlement resulted in a negotiated Classification of costs, rather than using the Minimum Plant method, ATCO is directed to bring this topic forward at the next GRA Phase II application for review by the Commission.

Directions 14, 15 and 16

188. The following Direction 14 appeared at page 85:

ATCO Gas is directed to assess the appropriateness of using the -36°C adjustment directed by this Decision as a proxy for diversity and to report on this analysis in the next Phase II proceeding. In addition, ATCO Gas is directed to consider alternative methods of reflecting diversity in allocating the demand component of costs in the next GRA. In particular, ATCO Gas is directed to include in its next Phase I application a program designed to collect a representative sample of diversity measurements across the North and South distribution systems. The results of this program, if approved by the Board in the next Phase I proceeding, will be provided in the next Phase II proceeding.

189. The following Direction 15 appeared at page 86:

Accordingly, the Board directs ATCO Gas to provide further review and analysis supporting its minimum design temperatures in association with the determination of NCP in its next GRA in both the Phase I and Phase II.

190. The following Direction 16 appeared at page 87:

The Board directs ATCO Gas to provide a feasibility assessment for verification of the peak demands that are established from billing data through extrapolation to the design temperature with actual metered data and report on the progress in the next GRA.

191. ATCO provided a response to these related Directions in both the 2008-2009 GRA Phase I and again in the Phase II Application in Tab M and section 5.8.5. In Decision 2008-113, pages 49-50, the Commission did not approve the cost of the proposed program. ATCO provided a discussion on diversity and its views in section 5.8.5. The Commission is satisfied that ATCO has complied with these three Directions.

192. The Commission also notes that in clause 7.5 of the Settlement ATCO has undertaken to further investigate the development of the Peak Use Method it proposed in the Phase II Application and report its progress by December 31, 2011.

Decision 2007-059

Direction 1

193. The following Direction appeared at page 5:

The Board considers that the sampling process described in Alternative 2 represents a cost effective compromise and directs ATCO Gas to proceed in that fashion and report the findings in its next Phase II GRA application. The Board understands that the sample will include a random selection of service lines from all service locations, vintages and sizes. The Board considers that the associated costs will not reflect a material amount and that the costs can be absorbed as part of operating expenses without the need for incremental funds. If the results of the sampling process confirm that the North service line information can effectively be used as a surrogate for the South, the Board concurs with ATCO Gas that the North service line information could continue to be used as a surrogate for the South, subject to a similar review process as outlined by ATCO Gas in

Board Direction 10 Attachment 1.⁶ This verification review process should demonstrate that recent South installations and North installations continue to be similar.

⁶ ATCO Gas provided an example of a review process where the number of service installations (less disconnects) by pipe size were compared between the North and South for the most recent four year period (2003-2006).

194. ATCO provided a response to this Direction in Tab M and section 5.6.10 of its Phase II Application, which indicated the North information did not prove useful as a surrogate and the sample data from the South should be used instead. The Commission considers ATCO has complied with this Direction. However, as was noted in respect of Direction 9 in Decision 2007-026, since the Settlement resulted in a negotiated classification of costs, rather than using the Minimum Plant method, ATCO is directed to bring this topic forward at the next GRA Phase II application for review by the Commission.

Directions 2 and 3

195. The following related Directions appeared at pages 5-6:

While ATCO Gas suggested that a sampling process ought to be undertaken for the South each time a Phase II application is prepared, if the sample results do not support use of the North service line information as a surrogate for the South, the Board considers it reasonable that a new South sampling process only needs to be completed for the purposes of a Phase II application if the previous sampling process was conducted more than five years previously or if the mix of pipe sizes in recent service line installations is materially different than the historical mix.

The Board notes from Attachment 1 in Board Direction 10 that ATCO Gas has been collecting service installations by size for the South since 2003. To facilitate any verification review process and to develop a data base the Board directs ATCO Gas to continue to collect relevant data on a going forward basis for the South to document installations by size.

196. The Commission recognizes that for the purpose of the Settlement the service line data is not required. However, since classification could be done in the future using the service line installations by size data, the Commission directs ATCO to continue to comply with these Directions and provide updates in future GRA Phase II applications.

9 FUTURE GRA PHASE II FILINGS

197. While the Commission has approved the Settlement in its entirety, this Decision has highlighted certain informational and analytical requirements to be addressed in future Phase II filings. These future Phase II filing requirements all relate to enhancing the understanding of the Commission and parties of the customer impacts over time of the changes to cost allocations and rate design provided for in the Settlement. This information will assist the Commission and parties in determining whether or not modifications to the cost allocations, rate groups or rate design may be required. Consistent with this objective the Commission directs ATCO to file an update with the Commission prior to December 31, 2015 which evaluates the changes to cost allocation and rate design in light of the objectives, goals and benefits it was designed to achieve and identifying any undue cross-subsidizations that may be occurring. As part of this filing, ATCO should consider the merits of filing a COSS in order to substantiate its findings.

10 ORDER

198. IT IS HEREBY ORDERED THAT:

In accordance with the terms of this Decision, the Settlement as filed, in its entirety, as contained in Appendix 3 to this Decision is approved.

Dated on June 25, 2010.

ALBERTA UTILITIES COMMISSION

(original signed by)

Willie Grieve
Chair

(original signed by)

Bill Lyttle
Commissioner

APPENDIX 1 – PROCEEDING PARTICIPANTS

Name of Organization (Abbreviation) Counsel or Representative
ATCO Gas (ATCO) M. Buchinski R. Trovato D. Wison J. Santos D. Zavaduk J. Teasdale L. Taylor
AltaGas Utilities Inc. (AUI) J. Coleman
BP Canada Energy Company (BP) C. Worthy G. Boone
The City of Calgary (Calgary) D. Evanchuk M. Rowe H. Johnson
Consumers' Coalition of Alberta (CCA) J. A. Wachowich J. Jodoin
ENMAX Energy Corporation (ENMAX) A. Morgans
Nexen Marketing (Nexen) D. White
Public Institutional Consumers of Alberta (PICA) N. J. McKenzie
Rate 13 Group (R13 Group) L. Manning D. Hildebrand
Shell Energy North America (Canada) Inc. (Shell) J. Haskey
Office of the Utilities Consumer Advocate (UCA) J. A. Bryan C. Flieger R. Bruggeman H. Vander Veen

Alberta Utilities Commission

Commission Panel

W. Grieve, Chair
B. Lyttle, Commissioner
N. A. Maydonik, Q.C., Commissioner⁸²

Commission Staff

B. McNulty (Commission Counsel)
P. Howard
A. Laroia
C. Burt
R. Armstrong, P.Eng.

⁸² Deceased May 16, 2010.

APPENDIX 2 – SUMMARY OF COMMISSION DIRECTIONS

This section is provided for the convenience of readers. In the event of any difference between the Directions in this section and those in the main body of the Decision, the wording in the main body of the Decision shall prevail.

1. While the Commission has accepted for purposes of the Settlement Application the creation of the Mid Use Rate Group, the Commission directs ATCO in its next GRA Phase II application to review the continued use of, and the volume parameters for, the Mid Use Rate Group. Any further settlement application must also address the rationale for the continued designation of the Mid Use Rate Group. Paragraph 106
2. While the Commission accepts the Settlement Application and provisions of the Settlement which change COSS classification and distribution methodologies previously established in Decision 2007-026, the Commission directs ATCO in its next GRA Phase II application to review each of these matters and indicate, with reasons, which methodologies ATCO considers will best result in just and reasonable rates that are not unjustly discriminatory on a going forward basis. Any further settlement application must also address the rationale for the methodologies selected. Paragraph 127
3. The Commission realizes that, although Schedule “C” charges are included as part of the T&Cs, the charges result in revenues that are contributions-in-aid-of-construction and therefore directly impact the revenue requirement. It would be appropriate to discuss and approve the estimated revenues generated by such charges during the Phase I of a GRA. Accordingly, the Commission directs ATCO to submit and support the estimated revenues attributable to Schedule “C” charges and any proposed changes in its next GRA Phase I application. Paragraph 137
4. The Commission is concerned about the overall lack of policies and procedures for the timelines underlying custom installations where a 50 percent upfront deposit is required. Although the Commission recognizes that each custom job is different and can be difficult to estimate, it expects ATCO to be proactive in dealing with customers who have made a 50 percent contribution by providing them with timely and reliable information regarding the estimated job start time and the estimated length of time to completion. The Commission directs ATCO to monitor and report to the Commission at its next GRA Phase I the number of custom customer contribution installations done and the number of cases where a 50 percent deposit was required..... Paragraph 138
5. The Commission directs ATCO to place a notice on its website that its Distribution Access Service and Distribution Service Connection T&Cs have been updated and update its website with the new T&Cs. Paragraph 139
6. The Commission also directs ATCO to amend its Retailer Guide and all other public documentation to reflect the changes made to the T&Cs as approved by this Decision as soon as possible. Paragraph 140
7. The Commission also finds it notable that the Settlement Parties support these items for deferral account treatment. The Commission therefore approves the creation of deferral accounts for the items discussed in clauses 2.11, 3.3 and 5.2. In addition, the Commission directs ATCO to address the disposition of deferral accounts related to

- clauses 2.11 and 3.3 and the status of the deferral account related to clause 5.2 in its next GRA Phase I. Paragraph 150
8. ATCO provided a response to this Direction in Tab M and section 5.6.11 of its Phase II Application. The Commission considers ATCO has complied with this Direction. However, since the Settlement resulted in a negotiated Classification of costs, rather than using the Minimum Plant method, ATCO is directed to bring this topic forward at the next GRA Phase II application for review by the Commission. Paragraph 187
 9. ATCO provided a response to this Direction in Tab M and section 5.6.10 of its Phase II Application, which indicated the North information did not prove useful as a surrogate and the sample data from the South should be used instead. The Commission considers ATCO has complied with this Direction. However, as was noted in respect of Direction 9 in Decision 2007 026, since the Settlement resulted in a negotiated classification of costs, rather than using the Minimum Plant method, ATCO is directed to bring this topic forward at the next GRA Phase II application for review by the Commission. Paragraph 194
 10. The Commission recognizes that for the purpose of the Settlement the service line data is not required. However, since classification could be done in the future using the service line installations by size data, the Commission directs ATCO to continue to comply with these Directions and provide updates in future GRA Phase II applications. Paragraph 196
 11. While the Commission has approved the Settlement in its entirety, this Decision has highlighted certain informational and analytical requirements to be addressed in future Phase II filings. These future Phase II filing requirements all relate to enhancing the understanding of the Commission and parties of the customer impacts over time of the changes to cost allocations and rate design provided for in the Settlement. This information will assist the Commission and parties in determining whether or not modifications to the cost allocations, rate groups or rate design may be required. Consistent with this objective the Commission directs ATCO to file an update with the Commission prior to December 31, 2015 which evaluates the changes to cost allocation and rate design in light of the objectives, goals and benefits it was designed to achieve and identifying any undue cross-subsidizations that may be occurring. As part of this filing, ATCO should consider the merits of filing a COSS in order to substantiate its findings. Paragraph 197

APPENDIX 3 – 2008-2009 GRA PHASE II NEGOTIATED SETTLEMENT

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Appendix 3 -
Negotiated Settlement

(consists of 29 pages)

APPENDIX 4 – DISTRIBUTION ACCESS SERVICE TERMS AND CONDITIONS OF SERVICE

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Appendix 4 - TandC
Distribution Access Se

(consists of 70 pages)

APPENDIX 5 – DISTRIBUTION SERVICE CONNECTIONS TERMS AND CONDITIONS OF SERVICE

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Appendix 5 - TandC
Distribution Service C

(consists of 46 pages)



November 17, 2009

[Via DDS](#)

Alberta Utilities Commission
4th Floor, Fifth Avenue Place
425-1 Street, S.W.
Calgary, Alberta
T2P 3L8

ATTENTION: Paul Howard
Lead Application Officer

Dear Mr. Howard:

Re: ATCO Gas 2008-2009 General Rate Application, Phase II
Application No. 1604944, Proceeding ID. 184
Negotiated Settlement Process (NSP)

Attached for approval by the Commission is the Negotiated Settlement (the Settlement) that has been ratified by all of the interested parties that participated in the NSP. The Settlement addresses all aspects of Application No. 1604944. A Settlement Brief has been provided identifying the significant aspects of the Settlement.

Ralph Trovato
Manager, Pricing
Phone: (780) 420-7341
Fax: (780) 420-5098

RT/lt

ATCO Gas 2008-2009 GRA Phase II

Settlement Brief

Application by ATCO Gas for Approval of Negotiated Settlement Agreement

Introduction

1. ATCO Gas hereby applies to the Alberta Utilities Commission (AUC or Commission) under Section 28.53 of the *Gas Utilities Act, R.S.A. 2000, c. G-5* and in accordance with AUC Rule 018 for an Order to approve the 2008-2009 GRA Phase II Negotiated Settlement Agreement (“the Settlement”) found in Appendix A of this Application.
2. The following parties participated in the negotiations and are signatories to the Settlement:
 - ATCO Gas
 - The Rate 13 Group
 - The City of Calgary
 - The Office of the Utilities Consumer Advocate (UCA)
 - The Consumers Coalition of Alberta (CCA)
3. The Settlement is a product of negotiations between ATCO Gas and interested parties. It is submitted that the Settlement represents an acceptable balance of interests amongst the parties, and is in the public interest. The Settlement reflects compromises by these diverse interests. Consequently, the components of the Settlement are inextricably linked and the Settlement is therefore presented to the Commission for approval as a single package and is contingent on the Commission's approval of the entire Settlement.
4. The Settlement process was open and fair and provided an appropriate forum for meaningful stakeholder participation. Furthermore, considering the extensive body of evidence available on the Phase II proceeding record, there was sufficient information available to all parties to facilitate the negotiations.
5. No unresolved issues are identified in the Settlement.

Background

6. By Application dated March 30, 2009, ATCO Gas filed with the Commission for approval its 2008/2009 General Rate Application – Phase II. The Commission established a proceeding schedule which was completed with the exception of the filing of Rebuttal Evidence by ATCO Gas.
7. In correspondence dated September 4, 2009, ATCO Gas sought approval from the Commission to enter into a negotiated settlement process (“NSP”) with interested parties.
8. On September 25, 2009, ATCO Gas received permission from the Commission to commence negotiations with interested parties.
9. Negotiation meetings occurred on October 7, October 9, October 14, and October 21, 2009. Representatives of ATCO Gas, the UCA, CCA, City of Calgary, Rate 13 Group and the Commission were in attendance at all four meetings. All settlement offers, including unexecuted drafts of the Settlement, were exchanged and discussed among the parties on a confidential and without prejudice basis and shall remain confidential.
10. By letter dated October 30, 2009, ATCO Gas informed the Commission that an agreement in principle had been reached between ATCO Gas and the parties listed in paragraph 2.

Notice

11. As confirmed in Clause 9.10 of the Settlement, the parties to the Settlement acknowledge that appropriate notice in respect of the negotiation process was provided to all interested parties registered for the Phase II proceeding. Notice of the process was provided through the filing of ATCO Gas’ request to commence a negotiation process related to this proceeding, through the approval of that request by the Commission in its correspondence of September 25, 2009, and through the filing by ATCO Gas of meeting notices on the AUC website, which were distributed to all interested parties. The interested parties registered for the Phase II proceeding that did not actively participate in the negotiated settlement process were ENMAX Energy Corporation, BP Canada,

Nexen Marketing, Shell Energy North America (Canada) Inc. and AltaGas Utilities Inc. ATCO Gas is not aware of any objection to the negotiation process or Settlement from any of these parties.

Approvals Sought

12. The Settlement is provided in Appendix A. ATCO Gas is seeking approval of the Settlement in its entirety. The Settlement represents a comprehensive negotiated settlement in respect of all aspects of the Phase II application filed by ATCO Gas regarding its 2008-2009 General Rate Application.
13. The specific approvals sought in this Application as part of the Settlement approval are as follows:
 - That the Commission approves the methodology utilized to develop the 2009 COSS contained in Attachment 1 of the Settlement and as outlined in Clauses 2.10 to 2.23 of the Settlement.
 - That the Commission approves the split of the Low Use rate group into a Low Use rate group and a Mid Use rate group effective January 1, 2011 as described in Clause 2.10 of the Settlement and as per the 2009 COSS contained in Attachment 1 of the Settlement.
 - That the Commission approves the methodology described in Clause 2.1 of the Settlement to determine rates for 2010.
 - That the Commission approves the Terms and Conditions of Service as attached to this Settlement Brief in Appendices B1 and B2, including the Schedule C charges effective January 1, 2010 or as soon as possible thereafter, as outlined in Clauses 3.1 to 3.2 of the Settlement and approves the implementation of the Schedule C charges as provided for in Clause 3.3 of the Settlement.
 - That the Commission approves the Rate Design matters as addressed in Clauses 4.1 to 4.4 of the Settlement.

- That the Commission approves the changes to the rate schedules as addressed in Clauses 6.1 to 6.5 of the Settlement.
- That the Commission approves the use of deferral accounts as outlined in Clause 2.11, Clause 3.3 and Clause 5.2 of the Settlement.
- Any other approvals the Commission views are necessary to give effect to the Settlement in its entirety.

Future Rate Related Processes

14. As a final 2009 revenue requirement has not been approved for ATCO Gas, and given that the creation of the Mid Use rate group will not become effective until January 1, 2011, a number of future filings related to the Settlement will be required. ATCO Gas will describe those future filings as contemplated by the Settlement below. Although each filing is discussed as a separate application, ATCO Gas will make efforts to combine the applications where possible to reduce regulatory costs for customers.
15. As discussed in Clause 2.1 of the Settlement, once the final 2008/2009 revenue requirement forecast has been approved through the GRA Compliance Proceeding ID. 294, ATCO Gas will file updated COSS for each of the North and the South based on the Tab A and Tab B COSS provided in the 2009 Phase II Application. The updated Tab A and Tab B COSS will be used to determine the rates for the year 2010. The purpose of the application will be to establish rates for the year 2010. The COSS methodology in Tab A and Tab B are consistent with the findings of the Board in Decision 2007-026, ATCO Gas' last Phase II decision.
16. ATCO Gas will file an application seeking the finalization of rates for the years 2008 and 2009 in the year 2010.
17. ATCO Gas may be required to file for rate riders to address matters such as the finalization of any difference between what was recovered for the years 2008 and 2009 and the final approved revenue requirement, as well as the finalization of any placeholders that may have occurred at the time. ATCO Gas may also be required to address through rate riders timing issues related to the effective date of the implementation of rates for the year 2010.

18. ATCO Gas will also update the 2009 COSS attached to the Settlement as Attachment 1 for the final 2009 revenue requirement approved through the 2008/2009 GRA Compliance process, as well as the finalization of any outstanding placeholders and/or the removal of the Carbon assets that occurs by August 31, 2010. This updated COSS will be referred to as the Final 2009 COSS. The Settlement outlines the changes that are incorporated in the 2009 COSS attached to the Settlement in Clauses 2.10 to 2.23 of the Settlement.
19. ATCO Gas will file the Final 2009 COSS and resultant rates (to become effective January 1, 2011) by September 13, 2010, for Commission approval.
20. ATCO Gas reserves the right to file amendments to the rates generated by the Settlement for matters not contemplated by the Settlement, such as the finalization of outstanding placeholders, the removal of the Carbon assets, or the filing of a General Rate Application by ATCO Gas. However, the Parties to the Settlement will not seek an alteration to the Final 2009 COSS principles for any application contemplated by Clause 2.5 of the Settlement that is filed during the Term of the Settlement. The Parties agree, however, that adjustments to the revenue to cost ratios may be required.
21. ATCO Gas has the right to file applications seeking amendments to the Terms and Conditions of Service including to Schedule C charges during the Term of the Settlement.

Conclusion

22. ATCO Gas submits that the Settlement is reasonable and fair to the Parties and is in the public interest. Specifically:
 - The Parties who are signatories to the Settlement are knowledgeable concerning the matters addressed by the Settlement and their consensus provides a basis on which the Commission can reasonably conclude the Settlement is in the public interest.
 - The Settlement results in greater regulatory efficiency compared to a litigated process.

- The rates resulting from the Settlement are just and reasonable and rate shock is not occurring for any rate group. ATCO Gas has provided a cost comparison at different levels of consumption in Appendix C to the Settlement Brief. The comparison is based on the rates shown on Schedule A provided in Attachment 1 of the Settlement, and what the rates would have been based on the COSS methodology approved in Decision 2007-026 (with the addition of the new Mid Use rate group for proper comparability).
- The Settlement is consistent with existing law and Commission policies.

23. For the above reasons, ATCO Gas requests the Commission approve the Settlement in its entirety. ATCO Gas submits that the Commission's approval of the Settlement would be in the public interest and consistent with the Commission's commitment to the negotiated settlement process and the objectives of achieving greater regulatory efficiencies and effectiveness through the negotiation process.

ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 17th DAY OF November, 2009.

Appendix A

ATCO Gas
2008/09 GRA Phase II Negotiated Settlement (“the Settlement”)

1. Overview

- 1.1. The Settlement addresses all aspects of the following regulatory proceeding:
 - 1.1.1. ATCO Gas 2008-2009 General Rate Application – Phase II, Application No. 1604944, ID. 184 (herein referred to as the Phase II proceeding).
- 1.2. The Term of the Settlement is from January 1, 2010 to December 31, 2015. The Term of the Settlement can be extended if all Parties to the Settlement agree to a new Term.
- 1.3. The following parties (herein referred to as the Parties) are signatories to the Settlement:
 - ATCO Gas
 - Consumers Coalition of Alberta
 - The Utilities Consumer Advocate
 - The Rate 13 Group
 - The City of Calgary

2. Settlement Specifics

- 2.1. ATCO Gas will maintain the rate structure approved in Decision 2007-026 until January 1, 2011. Once the final 2008/2009 revenue requirement forecast has been approved through the GRA Compliance process, ATCO Gas will file updated Cost of Service Studies (COSS) for each of the north and the south based on the Tab A and Tab B COSS provided in the Phase II Proceeding Application, which are consistent

with Decision 2007-026. The updated Tab A and Tab B COSS will be used to determine the rates for the year 2010. ATCO Gas may also be required to file for rate riders to address the finalization of any changes to the 2008/2009 revenue requirements from what was recovered in rates in 2008 and 2009, the finalization of any outstanding placeholders or the removal of Carbon, and to address any timing issues related to the implementation of the final rates for 2010. The Parties reserve the right to address the rate riders which give effect to the final true-up of revenues and revenue requirements for the years 2008 and 2009 as well as any placeholders.

- 2.2. The 2009 Cost of Service Studies (herein referred to as the 2009 COSS) and Rate Design (Schedule A) which reflect the intent of the Settlement are provided in Attachment 1 to the Settlement.
- 2.3. ATCO Gas agrees to update the 2009 COSS attached to this Settlement for the final 2009 revenue requirement to be approved through the 2008/2009 GRA Compliance process. In the event that other outstanding matters related to placeholders and/or the removal of the Carbon assets are finalized by August 31, 2010, ATCO Gas will also update the 2009 COSS for those matters. The 2009 COSS updated pursuant to this Clause 2.3 is herein referred to as the Final 2009 COSS. No other changes will be made to the Final 2009 COSS except as may be required to give effect to the Settlement.
- 2.4. ATCO Gas will file the Final 2009 COSS based upon Clause 2.2 and 2.3 above and resultant rates (to become effective January 1, 2011) for Commission approval by September 13, 2010 which should provide sufficient time in which to obtain approval prior to January 1, 2011. The parties to the Settlement will not object to the application seeking approval of the Final 2009 COSS and resultant rates to the extent that it is consistent with the Settlement.

- 2.5. ATCO Gas reserves the right to file an application seeking an adjustment to the January 1, 2011 resultant rates from the Final 2009 COSS for matters not contemplated by the Settlement, including (but not limited to):
 - 2.5.1. The finalization of outstanding placeholders or the removal of the Carbon assets if they have not been reflected in the Final 2009 COSS;
 - 2.5.2. The filing of a General Rate Application by ATCO Gas.
- 2.6. The Parties agree to not seek an alteration to the Final 2009 COSS principles for any application contemplated by Clause 2.5 that is filed during the Term of the Settlement, however, the Parties agree that adjustments to the revenue to cost ratios may be required as a result of any rate application filed pursuant to Clause 2.5 of the Settlement.
- 2.7. ATCO Gas reserves the right to file an application seeking an amendment to the Terms and Conditions of Service and/or Schedule C charges during the Term of the Settlement. ATCO Gas will make the Parties to the Settlement aware of its intentions prior to the filing of any such application. The Parties acknowledge that the Settlement does not address any such future application.
- 2.8. ATCO Gas acknowledges that while the Settlement does address COSS methodologies, it does not address any subsequent adjustments to the resultant rates from the Final 2009 COSS and ATCO Gas has expressly reserved the right to file an application seeking an adjustment to the resultant rates from the Final 2009 COSS for matters not contemplated by the Settlement and all Parties to the Settlement are free to take a position with respect to such an application.

- 2.9. ATCO Gas has prepared the 2009 COSS and Rate Design attached to the Settlement based on the methodology approved in Decision 2007-026 with the following specific changes outlined below in 2.10 to 2.23.

Rate Groups

- 2.10. The Low Use Rate Group will be split into two rate groups effective January 1, 2011. The two new rate groups will be the Low Use Rate Group and the Mid Use Rate Group. The Low Use Rate Group will be comprised of customers that consume 1,200 GJ or less annually. The Mid Use Rate Group will be comprised of customers that consume more than 1,200 GJ annually, but no more than 8,000 GJ annually.
- 2.11. The Parties agree that ATCO Gas will be allowed to use a deferral account to defer any incremental operating costs related to the creation of the two new rate groups until its next General Rate Application at which time the disposition of the deferral account will be addressed.

Classification of Distribution Mains Costs

- 2.12. Distribution Mains costs will be classified 35% Customer and 65% Demand and distributed on the basis of Average customer and NCP Demand.

Classification of Distribution Services Costs

- 2.13. Distribution Services costs will be classified 100% Customer and distributed on the basis of Weighted Customers as shown on page 36 of the 2009 COSS.

Classification of Distribution Meters Costs

- 2.14. Distribution Meter costs will be classified 100% Customer and distributed on the basis of Weighted Customers as shown on page 34 of the 2009 COSS.

Functionalization of Costs

- 2.15. Costs previously functionalized as Credit and Collection will be functionalized as Customer Service. There will no longer be a Credit and Collection function.
- 2.16. For clarification purposes, the function previously referred to as Consumer Information will be renamed Consumer Education.
- 2.17. Load Settlement and Load Balancing costs will be combined into one function called Retailer Service.
- 2.18. The Gas Supply, Production and Gathering and Storage functions will be removed.
- 2.19. AMR Meter Reading related costs that are directly assignable to the Meter Reading function will be identified and distributed directly to the appropriate Rate Groups.
- 2.20. The Distributed Application component of Administrative Expense Prime Account 721 will be directly assigned to the appropriate functions.
- 2.21. Distribution Mains and Services will be separated into a Mains function and a Services function.
- 2.22. The Jobbing and Facility Repair income credits which were previously functionalized to Distribution Mains and Services will be functionalized to Customer Service and Distribution Services (Jobbing income credits) and to the Distribution Meters, Services and Mains functions (Facility Repair income credits).

Distribution Units

- 2.23. The Distribution Units used in the 2009 COSS will be as shown on page 25 of the 2009 COSS which is consistent with the methodology approved in Decision 2007-026 with the exception that the Demand

Distribution Units for the North will be based on a design temperature of -40 Degrees Celsius. The design temperature will remain unchanged at -36 Degrees Celsius in the South.

3. Terms and Conditions of Service

- 3.1. The Terms and Conditions of Service as filed in the Phase II Proceeding Application and modified as per the response to R13-AG-11, will be implemented effective January 1, 2010 or the soonest possible date thereafter if approval from the Commission of the Settlement has not been received as of that date. ATCO Gas will attach a copy of the Terms and Conditions of Service to the Settlement Application.
- 3.2. The Schedule C charges as filed in the Phase II Proceeding Application but modified as per Clause 3.3 of the Settlement will be implemented effective January 1, 2010 or the soonest possible date thereafter if approval from the Commission of the Settlement has not been received as of that date. ATCO Gas will attach a copy of the Schedule C charges to the Settlement Application.
- 3.3. ATCO Gas agrees to defer the impact of changes to Schedule C charges based on Attachment 2 to the Settlement. Attachment 2 reflects a phasing in of the change to the Service Line fixed charge component over a three year period to transition the impact on customers (as per the second tab of Attachment 2). In the event the new Schedule C charges are implemented after January 1, 2010, ATCO Gas will pro-rate the amounts shown in Attachment 2 based on the number of calendar months remaining in the year. ATCO Gas will continue to defer the amounts shown in Attachment 2 until the time of

ATCO Gas' next General Rate Application at which time the disposition of the deferral account will be addressed.

4. Rate Design

- 4.1. The 2009 forecast billing demand for the High Use Rate Group will be reduced by 2% to reflect the change to a Gas Day billing demand for the High Use Rate Group effective January 1, 2011 as noted in Clause 6.5 of the Settlement.
- 4.2. The "Total Revenue" recovered from the High Use Rate Group as per Schedule A attached to this Settlement is effective as of January 1, 2011, and can only be altered by the following:
 - 4.2.1. The High Use Rate Group's representative share of any AUC approved change to the 2009 revenue requirement will be determined through the application of the principles in the Final 2009 COSS and Rate Design. Specifically, the revenue requirement to be recovered from the ATCO Gas South High Use Rate Group will be determined by applying the methodology in the ATCO Gas South 2009 COSS attached to the Settlement to the approved ATCO Gas South 2009 revenue requirement, and deducting \$176,000. This amount is to be recovered from the South Low Use, Mid Use and Irrigation Rate Groups on the basis of their respective approved 2009 forecast throughput. The revenue requirement to be recovered from the ATCO Gas North High Use Rate Group will be determined by applying the methodology in the ATCO Gas North 2009 COSS attached to the Settlement and deducting \$278,000. This amount is to be recovered from the North Low Use and Mid Use Rate Groups on the basis of their respective approved 2009 forecast throughput.
 - 4.2.2. The High Use Rate Group's representative share for any rate adjustment related to the finalization of any outstanding

placeholder, removal of the Carbon assets, or interim rate application for ATCO Gas will be determined through the application of the principles in the 2009 Final COSS

4.2.3. As the result of the approval of a test period revenue requirement for ATCO Gas subsequent to the year 2009. For approved test year revenue requirements subsequent to 2009, the High Use Rate Group deductions specified in Clause 4.2.1 will not be applied.

4.3. The Fixed Charge for the Mid Use Rate Group will be set at the same level as the Low Use Rate Group effective January 1, 2011.

4.4. The Fixed Charge for the Irrigation Rate Group will be based on recovery of 65% of Customer allocated costs effective January 1, 2011

5. 2008/2009 Final rates

5.1. ATCO Gas will file an application seeking approval to finalize rates for the years 2008 and 2009 in 2010. The Parties to the Settlement will not object to the application to declare the 2008 and 2009 rates as final subject to the use of deferral accounts as noted in Clause 5.2 to address outstanding matters.

5.2. Parties to the Settlement agree with the use of deferral accounts to address the outstanding matters related to placeholders and the use of deferral accounts to address the removal of the Carbon related assets from utility service.

6. Rate Schedules

6.1. ATCO Gas will include the following words to the Low Use rate schedule effective January 1, 2011:

"A Low Use customer that consumes more than 1200 GJ of natural gas annually but no more than 8000 GJ annually for two consecutive years

will automatically be switched to the Mid Use rate group without notice. ATCO Gas will notify customers' retailers of any such rate switches.

- 6.2. ATCO Gas will include the following words on the Mid Use rate schedule effective January 1, 2011:

"A Mid Use customer that consumes less than 1201 GJ of natural gas annually for two consecutive years will automatically be switched to the Low Use rate group without notice. ATCO Gas will notify customers' retailers of any such rate switches.

- 6.3. ATCO Gas will remove the clause titled "Nominated Demand" from the High Use rate schedule effective January 1, 2010.

- 6.4. ATCO Gas will add the following words to the High Use rate schedule effective January 1, 2010:

"Once a customer is billed under the High Use rate schedule, they will only be switched back to the Low or Mid Use rate schedule at the request of the customer. Only one switch per year will be allowed, and the effective date for the switch will be determined by ATCO Gas."

- 6.5. ATCO Gas will change the "Determination of Billing Demand" section of the High Use rate schedule effective January 1, 2011 to the following:

"The Billing Demand for each billing period shall be the greatest amount of gas in GJ delivered in any Gas Day (i.e. 8:00 am to 8:00 am) during the current and preceding eleven billing periods provided that the greatest amount of gas delivered in any Gas Day in the summer period shall be divided by 2.

Provided that for a Customer who elects to take service only during the summer period, the Billing Demand for each billing period shall be the greatest amount of gas in GJ in any Gas Day in that billing period.

In the first contract year, the Company shall estimate the Billing Demand from information provided by the Customer."

7. Commitments on the part of ATCO Gas

- 7.1. ATCO Gas agrees to review the weighted customer information for each Rate Group used for the classification and distribution of Distribution Service costs to determine whether any improvements to the allocation methodology can be made. ATCO Gas will provide an update on the progress of this work to the Parties by no later than December 31, 2011. The Parties acknowledge that the methodology used for the classification and distribution of Distribution Services costs in the 2009 COSS is subject to the provisions of Clause 2.6 of the Settlement.
- 7.2. ATCO Gas agrees to work with the Rate 13 Group to determine what reasonable measures can be taken with respect to cancel/rebill issues for High Use customers.
- 7.3. ATCO Gas agrees to take reasonable measures to move High Use customers to a calendar month billing cycle upon request. ATCO Gas has the right to charge the customer a reasonable amount to accommodate such a request.
- 7.4. ATCO Gas agrees to automatically provide hourly meter data to High Use customers upon request. ATCO Gas has the right to charge the customer a reasonable amount to accommodate such a request.
- 7.5. ATCO Gas agrees to review whether the existing AMR devices on ATCO Gas' system, including the Residential sample, can be used in conjunction with all other demand data for evaluating and enhancing

the Peak Use Methodology in the determination of the coincident and non-coincident demands for all rate groups for the purpose of cost allocation. ATCO Gas will provide an update on the progress of this work to the Parties by no later than December 31, 2011.

8. Re-openers

- 8.1. In the event that any Party to the Settlement or the Alberta Utilities Commission (herein referred to as the AUC) views that a material modification to the existing Rate Groups or Rate Design is required, the Settlement will be re-opened to address the changes necessary to implement the modification.
- 8.2. Furthermore, the Parties agree that any Party to the Settlement may, during the Term of the Settlement, request that the Settlement be re-opened in accordance with the following:
 - 8.2.1. The issuance of a final rate Decision for NGTL that incorporates the proposed integration of ATCO Pipelines and NGTL.
 - 8.2.2. A material change in circumstances, which was not contemplated at the time the Settlement was entered into, either has occurred or is expected to occur within the Term of the Settlement.
- 8.3. The Party requesting a re-opener of the Settlement under Clause 8.2.1 or 8.2.2 shall state the events and conditions upon which the Settlement is required to be re-opened. Any re-opener of the Settlement under Clause 8.2.1 shall be limited to addressing the specific impact of the integration of ATCO Pipelines and NGTL on ATCO Gas.
- 8.4. Following the evaluation of the identified events and conditions related to a re-opener under Clause 8.2.1 or 8.2.2, upon agreement by at

least one other Party to the Settlement, the Settlement will be re-opened to address the need or lack thereof to modify the Settlement.

- 8.5. In the event that no other Party to the Settlement agrees that the Settlement should be re-opened under Clause 8.2.1 or 8.2.2, the Settlement will not be re-opened. However, the requesting Party can apply to the AUC on a complaint basis.
- 8.6. The Settlement can be terminated as a result of the Term ending date having been reached without any agreement for extension or in the event that the Settlement has been re-opened and the Parties determine that a new Settlement cannot be negotiated.
- 8.7. In the event the Settlement is terminated for whatever reason, the existing rate structure at the time of termination will remain in place until a decision is issued by the Commission that alters that rate structure.

9. Other Provisions

- 9.1. The division of the Settlement into Clauses is for convenience and reference only and should not affect the interpretation or construction of the Settlement.
- 9.2. The Settlement including all attachments constitutes the entire settlement between the Parties and no other agreements, express or implied, have been made. Any alteration or amendment to the Settlement must be in writing and signed by all of the Parties.
- 9.3. The Settlement will be binding upon and enure to the benefit of the Parties and each of their respective successors and permitted assigns. A Party may not assign their rights and/or obligations under the Settlement without the consent of all other Parties, provided such consent is not unreasonably withheld.

- 9.4. The Settlement is to be interpreted pursuant to the laws of the Province of Alberta.
- 9.5. The failure of any Party to exercise any right, power or option given to it under the Settlement or to insist upon the strict compliance with any of the terms or conditions of the Settlement will not constitute a waiver of any provisions with respect to any other or subsequent breach.
- 9.6. Time will be of the essence in the Settlement and all its parts.
- 9.7. Unless otherwise stated, any dollar amounts, prices or amounts stated under the Settlement are in the lawful currency of Canada.
- 9.8. Unless otherwise stated, all accounting matters or terms in the Settlement will be interpreted and construed in accordance with generally accepted accounting principles in Canada.
- 9.9. References to any statute, legislation or regulation in the Settlement include all subsequent amendments enacted from time to time during the period covered by the Settlement.
- 9.10. The Parties agree that proper notice was provided with respect to the negotiation process that resulted in the Settlement.
- 9.11. Parties eligible for cost recovery will claim costs and ATCO Gas will pay, on an interim refundable basis, the costs incurred by each of the Parties in negotiating the matters included in the Settlement in accordance with the following terms:
 - 9.11.1. Payment shall be advanced upon receipt of an invoice from each Party which invoice must be received by ATCO Gas not later than 30 days after the Settlement has been submitted to the AUC for approval, and provided the Party indicates in writing

- that the costs have been reasonably incurred and that the cost claim complies with AUC Rule 022 on Intervener Costs.
- 9.11.2. Each Party will be solely responsible for obtaining approval of its costs in respect of the Application and in respect of negotiating the Settlement in accordance with the AUC's Rules of Practice and Rule 022. If the AUC does not approve all, or a portion of, the costs paid by ATCO Gas to any Party under Clause 9.11.1 of the Settlement, then such Party will refund the disallowed amount including GST to ATCO Gas within 30 days of the AUC issuing its decision not to approve the recovery of those costs. The Parties acknowledge and agree that payment by ATCO Gas on an interim refundable basis as contemplated by Clause 9.11.1 is not intended to influence or bind the AUC in its application of its cost claim authority and cost recovery guidelines.
- 9.11.3. ATCO Gas will include the costs approved by the AUC for each Party in its Hearing Cost account.
- 9.12. The Settlement is subject to approval by the Commission. Any adjustment to the Settlement as the result of a re-opener or Term extension requires approval by the Commission. The Parties to the Settlement agree that approval of this Settlement in its entirety as a package is required for the Settlement to be binding on any Party.
- 9.13. The Settlement is agreed to without prejudice to the position of the Parties in subsequent negotiations and/or regulatory proceedings except as specifically noted in the Settlement. The Parties agree that the terms of the Settlement have no precedential value in future proceedings and/or negotiations with ATCO Gas or any other regulated rate provider, and do not preclude or prejudice the rights of Parties to

pursue any issues of concern to them in any future proceeding or forum.

- 9.14. All information exchanged in the Settlement process is confidential and is provided on a without prejudice basis. All Parties to the Settlement must agree to the release of any confidential information exchanged in the Settlement process prior to its release. ATCO Gas shall be entitled to file the Settlement with the AUC.
- 9.15. No Party to the Settlement has withheld information relevant to the Settlement.

10. Execution

10.1. A facsimile signature will be deemed to be an original. The Settlement may be executed in counterparts and all executed counterparts shall constitute the Settlement. The executing parties agree to all the terms and conditions of the Settlement the _____ day of _____, 2009.

Company or Association Name

Per: _____

Title: _____

Per: _____

Title: _____

10. Execution

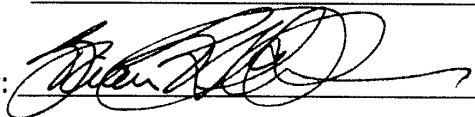
10.1. A facsimile signature will be deemed to be an original. The Settlement may be executed in counterparts and all executed counterparts shall constitute the Settlement. The executing parties agree to all the terms and conditions of the Settlement the 2nd day of November 2009.

Company or Association Name

ATCO GAS

Per: BR. Bale

Title: SENIOR VICE PRESIDENT FINANCE AND REGULATORY

Per: 

Title: PRESIDENT

November 2, 2009

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LAWSON LUNDELL

003

10. Execution

10.1. A facsimile signature will be deemed to be an original. The Settlement may be executed in counterparts and all executed counterparts shall constitute the Settlement. The executing parties agree to all the terms and conditions of the Settlement the 5 day of November 2009.

Company or Association Name

RATE 13 GROUP

Per: 

Title: Counsel to Rate 13 Group

Per: _____

Title: _____

November 2, 2009

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City of Calgary Finance

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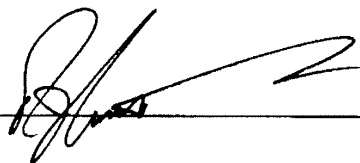
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10. Execution

10.1. A facsimile signature will be deemed to be an original. The Settlement may be executed in counterparts and all executed counterparts shall constitute the Settlement. The executing parties agree to all the terms and conditions of the Settlement the 5th day of November, 2009.

Company or Association Name

CITY OF CALGARY

Per:  R.J. MOUNT

Title: MGR - CORP. TAX & REGULATORY AFFAIRS

Per: _____

Title: _____

November 2, 2009

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10. Execution

10.1. A facsimile signature will be deemed to be an original. The Settlement may be executed in counterparts and all executed counterparts shall constitute the Settlement. The executing parties agree to all the terms and conditions of the Settlement the 5th day of November, 2009.

Company or Association Name

Office of the Utilities Consumer Advocate

Per: [Signature]

Title: Associate

Per: _____

Title: _____

November 2, 2009

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10. Execution

10.1. A facsimile signature will be deemed to be an original. The Settlement may be executed in counterparts and all executed counterparts shall constitute the Settlement. The executing parties agree to all the terms and conditions of the Settlement the 12 day of November 2009.

Company or Association Name

Consumers' Coalition of Alberta

Per: [Signature]

Title: Legal Counsel

Per: _____

Title: _____

AG - Ph II NSP - Final Version

APPENDIX 4 – DISTRIBUTION ACCESS SERVICE TERMS AND CONDITIONS

ATCO GAS
TERMS AND CONDITIONS
FOR
DISTRIBUTION ACCESS SERVICE

Effective: July 1, 2010

Effective July 1, 2010

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ARTICLE 1 – PREAMBLE

In accordance with the provisions of the Gas Utilities Act ("GUA") and the Regulations made thereunder ("Regulations"), ATCO Gas an operating division of ATCO Gas and Pipelines Ltd. ("ATCO Gas") will, for certain Customers, act solely as a Gas Distribution Service provider and will not be responsible for providing Gas directly to Customers or for billing delivery charges to Customers. In its role as a Gas Distribution Service provider, ATCO Gas will enable Retailers and the Default Supply Provider ("DSP") to acquire access to its Gas Pipeline System for the purposes of allowing them to sell Gas directly to Customers. A Customer may also act as a Self-Retailer by carrying out retailer functions to obtain Gas Services solely for its own use.

These Terms and Conditions are intended to apply to the relationship between ATCO Gas, as a Gas Distribution Service provider and all Retailers, the DSP, or any party who will be acting as an Agent on behalf of the Retailer/DSP for transactions governed by these Terms and Conditions. These Terms and Conditions will also govern the relationship between ATCO Gas and Customer(s) for whom the Retailer/DSP or any other party is acting as an Agent in its dealings with ATCO Gas. These Terms and Conditions serve as a companion to the Terms and Conditions for Distribution Service Connections which are intended to govern the relationship between ATCO Gas and Customer(s), or any other person whom the Customer has assigned to act on its behalf in its dealings with ATCO Gas, regarding the provision of Gas Distribution Service on its Gas Pipeline System.

These Terms and Conditions outline the rules that Retailers, the DSP, and Agents must follow to engage in Retailer transactions with the Company.

The service provided by ATCO Gas hereunder is regulated by the Alberta Utilities Commission ("AUC"), and parties having any inquiries or complaints regarding these Terms and Conditions may direct such inquiries or complaints directly to ATCO Gas or to the AUC. These Terms and Conditions have been approved by the AUC.

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ARTICLE 2 – DEFINITIONS AND INTERPRETATION

2.1 Definitions

The following words and phrases, whenever used in these Terms and Conditions, the Company's Natural Gas Rate Schedules, Company's Retailer Guide or a Distribution Access Service Agreement, shall have the meanings set forth below:

"Account" means a record maintained by ATCO Gas which contains receipts, deliveries, Rider D, Imbalance Purchase and Imbalance Sale, and adjustments applicable to each Retailer/DSP providing Gas Services to Customers on the Gas Pipeline System;

"Account Balancing" means the process of managing Gas receipts and/or deliveries in an Account in order to keep the difference, net of adjustments, within the tolerance specified by the Imbalance Window;

"Act" means the *Gas Utilities Act, R.S.A. 2000, c.G-5*, as amended from time to time;

"Agency Appointment Agreement" means an agreement between a Retailer/Self-Retailer or DSP and another party wherein the other party is appointed as Agent for that Retailer/Self-Retailer, or DSP;

"Agent" means a person who performs functions on behalf of a Self-Retailer, Retailer, or DSP including, but not limited to, retailer transactions with the Company;

"ATCO Pipelines" means the operating division of ATCO Gas and Pipelines Ltd. that is responsible for the operation and management of the Transmission System;

"AUC" means the Alberta Utilities Commission established under the *Alberta Utilities Commission Act, S.A. 2007, c.A-37.2*, as amended from time to time;

"Backcast" means an estimate of Customer Load prepared for the current Gas Day as described in the Retailer Guide;

"Business Day" is any day other than Saturday, Sunday or a holiday as defined in the *Interpretation Act, R.S.A. 2000, c.1-8*, as amended from time to time;

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"Company" means ATCO Gas, an operating division of ATCO Gas and Pipelines Ltd. or its successor;

"Customer" means a person, firm, partnership, corporation, organization or association (including without limitation, individual members of any unincorporated entity) who consumes Gas in end-use at its location and is connected to the Company Gas Pipeline System;

"Customer Billing Information" means the information required to be included on the Customer's bill issued by the Retailer/DSP as required by the Natural Gas Billing Regulation, A.R. 185/2003, or Default Gas Supply Regulation, A.R. 184/2003 respectively, as amended from time to time, and provided by the Company;

"Customer Information" means the data specified in the Natural Gas Settlement System Code and includes without limitation Site Customer name, Site Customer telephone number, Site Customer mailing address, Site Contact name, Site Contact phone number and other safety related information required to provide safe Gas Distribution Service to Customers;

"Customer Usage Information" means information regarding the historical Gas consumption as specified in AUC Rule 10.

"Day" means a period of twenty-four (24) consecutive hours;

"Default Supply Provider" or "DSP" means a Gas Distributor or a person authorized by a Gas Distributor, who provides Gas Services to Customers under rates, tolls or charges fixed by the AUC and terms or conditions fixed by the AUC;

"Distribution Access Service" means the service required to transport Gas to Customer(s) by means of a Gas distribution system. This service enables a Customer to obtain Gas supply service through Self-Retailing, from a Retailer or the DSP and is governed by these Terms and Conditions;

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"Distribution Access Service Agreement" means an agreement for the provision of Distribution Access Service pursuant to these Terms and Conditions between the Company and a Retailer/DSP, in the form attached as Schedule A hereto;

"Fair Trading Act" means the *Fair Trading Act, R.S.A. 2000, c.F-2*, as amended from time to time;

"Final Monthly Settlement" means the last Gas Settlement performed for a Retailer/DSP's Sites(s) for a Month, as described in the Natural Gas Settlement System Code;

"Firm Service Utility" means a service provided by ATCO Pipelines, an operating division of ATCO Gas and Pipelines Ltd. that is approved by the AUC;

"Forecast" means an estimate of Customer Load prepared for the current or next Gas Day and includes forecast F1, F2, and F3 as described in the Retailer Guide;

"Force Majeure" means circumstances not reasonably within the control of the Company, including acts of God, strikes, lockouts or other industrial disturbances, acts of the public enemy, wars, blockades, insurrections, riots, pandemics, epidemics, landslides, lightning, earthquakes, fires, storms, floods, high water, washouts, inclement weather, orders or acts of civil or military authorities, civil disturbances, explosions, breakdown or accident to equipment, mechanical breakdowns, temporary failures of gas supply, the intervention of federal, provincial, state or local government or from any of their agencies or boards excluding decisions and/or orders made by the AUC in the normal course of it exercising its authority to establish the revenue requirement of the parties to this agreement, the order or direction of any court, and any other cause, whether of the kind herein enumerated or otherwise;

"FSU Account" means a Firm Service Utility Account held by the Company on the Transmission System;

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"Gas" means all natural gas both before and after it has been subjected to any treatment or process by absorption, purification, scrubbing or otherwise, and includes all fluid hydrocarbons;

"Gas Day" means a Day beginning at eight hours (08:00), Mountain Standard Time;

"Gas Distribution Service" means the service required to transport Gas to Customers by means of a Gas Pipeline System, and includes any services the Gas Distributor is required to provide by the AUC or is required to provide under the *Act* or Regulations made thereunder;

"Gas Distributor" means the owner, operator, manager or lessee of a gas distribution system as defined in the *Act*;

"Gas Distribution Tariff" means the rates, tolls or charges fixed by the AUC and the terms and conditions fixed by the AUC, for Gas Distribution Service;

"Gas Pipeline System" means all those facilities owned or used by the Company in the receipt, delivery, transportation, measurement and testing of Gas, (including, without limitation, transmission and distribution lines, regulators, meters, equipment and machinery);

"Gas Services" as defined in the *Act* means:

- (i) the Gas that is provided and delivered, and
- (ii) the services associated with the provision and delivery of the Gas, including:
 - (A) arranging for the exchange or purchase of the Gas,
 - (B) making financial arrangements to manage the financial risk associated with the price of Gas,
 - (C) arranging for Gas Distribution Service,
 - (D) arranging for delivery of Gas to the gas distributor's specified Point(s) of Receipt,
 - (E) storage,
 - (F) billing, collection and responding to customer billing inquiries,

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- (G) maintaining information systems, and
- (H) any other services specified by the Minister by order as Gas Services;

"*Gas Settlement*" means any or all of Initial Monthly Settlement, Interim Monthly Settlement and/or Final Monthly Settlement as defined in the Natural Gas Settlement System Code;

"*GJ*" means gigajoules or one billion (1 000 000 000) joules;

"*Gross Heating Value*" means the number of megajoules obtained from the combustion of a cubic metre of gas at a temperature of fifteen degrees Celsius (15°C), with the gas free of water vapor, and at a pressure of 101.325 kPa absolute and with the products of combustion cooled to the initial temperature of the gas and the water formed by the combustion condensed to the liquid state;

"*Imbalance*" means the difference between energy quantities of Gas received and Gas delivered, net of adjustments, in an Account each Gas Day;

"*Imbalance Window*" means a range of Imbalances within which an Account is considered to be in balance without action being taken to adjust receipts into or deliveries from that Account;

"*Imbalance Purchase/Sale*" means the removal from, by Imbalance Purchase, or addition to, by Imbalance Sale the daily Account Imbalance energy quantity outside the nearest Account daily Imbalance Window boundary, as the case may be, in a Retailer/DSP Account by ATCO Gas which will be settled financially;

"*Intercontinental Exchange*" means Intercontinental Exchange, Inc., an electronic trading platform that may be used by market participants for transactions related to, among others, natural gas energy purchase or sale;

"*J*" or "*joule*" means the amount of work done when the point of application of a force of one (1) newton is displaced a distance of one (1) metre in the direction of the force;

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"*kPa*" means kilopascals of pressure gauge unless otherwise specified;

"*Load*" means the amount of natural Gas delivered or required to be delivered at any specific point or points in the Gas Pipeline System;

"*LBDA*" means the Company's load balancing deferral account that is used to record certain revenues and expenses associated with load balancing the Gas Pipeline System, including without limitation balancing purchase/sales and Imbalance Purchase/Sales;

"*Month*" means a period beginning at eight hours (08:00), Mountain Standard Time, on the first day of a calendar month and ending at eight hours (08:00), Mountain Standard Time, on the first day of the next succeeding calendar month;

"*NGX*" means Natural Gas Exchange Inc., an exchange for the trading and clearing of natural gas and electricity contracts that operates in a North American Technology and Physical Clearing Alliance with Intercontinental Exchange, Inc.;

"*Natural Gas Service Agreement*" means an agreement for the provision of a Service Connection pursuant to the Terms and Conditions for Distribution Service Connection, between the Company and a Customer;

"*Natural Gas or NG Settlement System Code*" means the document governing the standards for determining and communicating retail natural gas consumption for the purpose of load settlement;

"*Nomination*" means a request in electronic or other written or verbal form for Gas to flow at a Point of Receipt, a Point of Delivery or for receipt into or delivery out of an Account at a specified quantity on a specified date(s);

"*Point of Delivery*" for service by the Company to the Customer, means, unless otherwise specified in a Natural Gas Service Agreement, the outlet side of a meter;

"*Point of Receipt*" means the point on Company's system at which Retailer/DSP delivers Gas to the Gas Pipeline System under the Distribution Access Service Agreement. For

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clarity, this is usually indicated by Company's acceptance of a receipt Nomination into the Retailer/DSP's Account;

"R3 Regulation" means the *Roles, Relationships and Responsibilities Regulation, A.R. 186/2003*, as amended from time to time;

"Rate Schedule" means the natural gas rate schedule prepared by the Company and approved by the AUC, as amended from time to time;

"Retailer" means a person who sells or provides retail Gas Services directly to Customers and who is entitled to enroll Customers for Distribution Access Service under these Terms and Conditions and includes Self-Retailers;

"Retailer Business Function Identification" means the 2 character identification that describes the Retailer's/DSP's business function as a Retailer or a DSP as is specified in the Company's Retailer Guide.

"Retailer/DSP Account" means an Account held by a Retailer or the DSP;

"Retailer Guide" means the guide prepared by the Company which describes the business processes for the transactions between the Company and the Retailer/DSP in relation to the provision of service under these Terms and Conditions;

"Retailer Identification" means the 9 digit number that uniquely represents each Retailer/DSP operating within Alberta;

"Retailer of Record" means the Retailer or DSP who is listed in the Company's records through the procedures outlined in these Terms and Conditions, Gas Settlement System Code and Retailer Guide and thereby recognized by the Company, as a particular Customer's Retailer or DSP for a Point of Delivery at a particular time;

"Rider D" means a rate rider, expressed as a percentage, approved by the AUC applicable to Retailer/DSP Accounts for the recovery in kind of Unaccounted For Gas;

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"*Same Day Market*" means the intra-Alberta natural gas market that is generally available during trading hours on a calendar Day for transactions applicable to the Gas Day commencing on the same calendar Day;

"*Self-Retailer*" means a person carrying out Retailer functions to obtain Gas solely for its own use;

"*Service Connection*" shall have the meaning ascribed thereto in Company's Terms and Conditions for Distribution Service Connections;

"*Single Family Dwelling*" means a private residence provided with sleeping and cooking facilities intended for domestic use and in which the occupants live as a single housekeeping unit that is not part of a multiple dwelling;

"*Site*" means a unique end-use Point of Delivery, being the finest level at which settlement recognizes Retailer and DSP assignments, and receives consumption data;

"*Site ID*" means a unique identification number assigned by the Company for each unique end-use Point of Delivery;

"*Specific Facilities*" means those facilities installed by the Company for the benefit of a particular Customer/Retailer/DSP which are connected to the Gas Pipeline System and are required to transport Gas;

"*Tariff Bill File*" means a physical electronic file containing site-specific tariff charges, usage and demand information for given tariff bill periods; it may also contain applicable site-specific one time charges. The Tariff Billing Code Rules are contained in AUC Rule 004;

"*Transmission System*" means all those facilities owned or operated by ATCO Pipelines in the receipt, delivery, transportation, measurement and testing of Gas (including, without limitation, transmission lines, regulators, meters, equipment and machinery);

"*Unaccounted For Gas*" means Retailer's and DSP's share of Company's unaccounted for Gas, as specified in rate Rider D of the Company's Rate Schedule;

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"Yesterday Market" means the intra-Alberta natural gas market that is generally available during trading hours on a calendar Day for transactions applicable to the Gas Day commencing on the previous calendar Day;

2.2 Conflicts

- (a) If there is any conflict between a provision expressly set out in an Order of the AUC and these Terms and Conditions, the Order of the AUC shall govern.
- (b) If there is any conflict between a provision expressly set out in these Terms and Conditions, as may be amended from time to time, and a Distribution Access Service Agreement, the express provision of these Terms and Conditions shall govern, as of their effective date.

2.3 Headings

The division of these Terms and Conditions into Articles, subsections and other subdivisions and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of these Terms and Conditions.

2.4 Schedules and Appendices

The following schedules and appendices are attached to and form part of these Terms and Conditions:

- Schedule A - Distribution Access Service Agreement
- Schedule B - Disconnect Customer Site
- Schedule C - Non-Discretionary Charges
- Schedule D - Imbalance Purchase/Sales Charges

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ARTICLE 3 – GENERAL PROVISIONS

3.1 AUC Approval

These Terms and Conditions have been approved by the AUC. The Company may amend these Terms and Conditions by filing a notice of amendment with the AUC. Included in the notice to the AUC shall be notification of which Retailers/DSP are affected by the amendment and an explanation of how affected Retailers/DSP will be notified of the amendments. Any amendment to the Terms and Conditions will take effect 60 days after such notice is filed, unless the AUC otherwise directs.

3.2 Gas Distribution Tariff

The Gas Distribution Tariff is available for public inspection during normal business hours at the business offices of the Company and at the offices of the AUC and can be accessed at ATCO Gas's website at: www.atcogas.com. These Terms and Conditions form part of the Gas Distribution Tariff.

3.3 Effective Date

These Terms and Conditions come into force as per the Effective Date shown on the cover page. Whenever the Company files notice of an amendment to these Terms and Conditions, or when the AUC approves an amendment to these Terms and Conditions, revisions will be issued, with the effective date of the amendments indicated thereon.

3.4 Application of Terms and Conditions

- (a) These Terms and Conditions, as amended from time to time, apply to the Company, to each Retailer and DSP. These Terms and Conditions also govern the relationship between the Company and Customer(s) for whom the Retailer/DSP is acting as an Agent in its dealings with the Company.
- (b) These Terms and Conditions also apply to any party appointed as Agent for a Retailer pursuant to an executed Agency Appointment Agreement, as set out in the Retailer Guide.

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- (c) No agreement can provide for the waiver or alteration of any part of these Terms and Conditions unless such agreement is first filed with and approved by the AUC.

3.5 Retailer Guide

The Company has developed the Retailer Guide to help Retailers/DSP and Customers understand the normal practices of the Company. The Retailer Guide is available on the Company website at www.atcogas.com. The Retailer Guide will be updated, from time to time, to reflect changes to the Gas utility industry, or the changing needs of the Retailers, DSP or Customers. The Company is committed to follow practices in the Retailer Guide. However, as these practices cannot cover every situation that arises, it may be necessary to deviate from the Retailer Guide in certain circumstances.

3.6 Ownership of Gas Pipeline System

- (a) The Company remains the owner of all segments of the Gas Pipeline System, unless an agreement between the Company and the Retailer, DSP, or Customer specifically provides otherwise.
- (b) Payment made by Retailers/DSP or Customers for costs incurred by the Company in installing any segment of the Gas Pipeline System does not entitle Retailers/DSP or Customers to ownership of any such segment, unless an agreement between the Company and the Retailer, DSP or Customer specifically provides otherwise.

3.7 New Gas Pipeline System Segments, Specific Facilities and Service Additions

The Company reserves the right to communicate directly with the Customer in respect of any requests made by the Customer, or a party acting on its behalf, for the construction of new Gas Pipeline System segments, Specific Facilities or additional services as provided for in the *Natural Gas Billing Regulation, A.R. 185/2003*, as may be amended from time to time. The Company reserves the right to charge the Customer directly for any amounts required to be provided by the Customer under the Terms and Conditions for Distribution Service Connections.

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3.8 Title or Interest in Gas

The Company shall not acquire any title or interest in the Gas being transported under the Distribution Access Service Agreement.

3.9 Exclusive Control of Gas

Gas delivered to the Company by Retailer or DSP for transportation shall be under the exclusive control of the Company from the time such Gas is accepted for transportation at the Point of Receipt until delivered at the Point of Delivery.

3.10 Routing and Facilities

The Company does not dedicate the Gas Pipeline System or Specific Facilities to transport Gas for Retailers or DSP, and accordingly the routing and facilities used in the transportation of Gas through the Gas Pipeline System for Retailers and DSP shall be at the Company's sole discretion and may change from time to time.

3.11 Commingling or Exchange

The Company may in the course of transporting Gas through the Gas Pipeline System commingle with or exchange Gas owned by or transported for others, or remove certain hydrocarbon components present in the Gas. As commingling, exchanging, or the removal of certain hydrocarbon components may alter the Gross Heating Value or constituent parts of the Gas between the Point of Receipt and the Point of Delivery, the Company shall not be required to deliver at the Point of Delivery Gas with the same Gross Heating Value or containing the same constituent parts as Gas delivered at the Point of Receipt and the Company shall make whatever compensating adjustments to volume and Gross Heating Value as may be warranted. In the event, and to the extent, that any hydrocarbon components in the Gas delivered at the Point of Receipt are absent from the Gas delivered at the Point of Delivery as the result of commingling, exchanging or removal of such hydrocarbon components in the course of transporting the Gas, title to such hydrocarbon components shall, notwithstanding anything to the

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contrary otherwise contained in the Distribution Access Service Agreement, be deemed conclusively to have passed to the Company.

3.12 Right to Transport

Retailer/DSP covenants with the Company that Retailer/DSP shall have the right to transport all Gas delivered under the Distribution Access Service Agreement to Company at the Point of Receipt.

ARTICLE 4 – GENERAL OBLIGATIONS OF RETAILERS, DEFAULT SUPPLY PROVIDER

4.1 Timeliness, Due Diligence and Security Requirements

- (a) The Retailer/DSP shall exercise due diligence and use reasonable efforts in meeting its obligations hereunder, and perform same in a timely manner.
- (b) The Retailer shall adhere to all credit, deposit and security requirements specified in these Terms and Conditions.
- (c) The Retailer/DSP shall make every effort to ensure that its Customers are aware of the provisions of these Terms and Conditions that may affect the Customer(s).

4.2 Arrangements with Customers

Unless otherwise stated herein, the Retailer shall be solely responsible for having appropriate contractual or other arrangements with Customer(s) necessary to provide service to Customers. The Company shall not be responsible for monitoring, reviewing or enforcing such contracts or arrangements and shall not be liable for any loss, damages, cost, injury, expense or other liability, whether direct, indirect, consequential or special in nature, howsoever caused, as a result of the Retailer's failure to perform its obligations to its Customer(s).

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4.3 Responsibility for Gas Purchases

The Retailer/DSP will be solely responsible for the purchase of Gas supply for the Customer(s) it provides Gas Services to and for arranging the delivery of such Gas to the Point of Delivery for the Customer(s), subject to these Terms and Conditions.

4.4 Retailer Authorization

The Retailer shall be responsible for obtaining authorization from each Customer authorizing the enrollment of the Customer for receipt of Distribution Access Service by such Retailer.

4.5 Retailer and DSP Identification

Any information exchange or communications between the Retailer or DSP and the Company under these Terms and Conditions shall employ Retailer Identification.

4.6 Single Retailer/DSP for Customer

The Company shall not be required to recognize and deal with more than one Retailer and/or DSP in respect of a Point of Delivery at any given time. Nothing in these Terms and Conditions shall prohibit a Customer from entering into arrangements with multiple Retailers and/or DSP for a Point of Delivery, provided that a single Retailer/DSP is designated to be the Customer's Retailer/DSP for the purposes of these Terms and Conditions.

4.7 Fees and Other Charges

The Company will provide all standard services hereunder pursuant to the Gas Distribution Tariff. All additional, supplementary or extra non-discretionary services provided by the Company to a Retailer/DSP will be charged a separate rate or fee, such as those included, without limitation, in Schedule C. Payment for these services shall be in accordance with the provisions of these Terms and Conditions.

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ARTICLE 5 – CUSTOMER INQUIRIES AND CUSTOMER INFORMATION

5.1 Customer Inquiries

For Customers requesting information on Distribution Access Service, the Company shall:

- (a) make available notification and informational materials to consumers about competition and consumer choices;
- (b) direct Customers to an external source where they may obtain information about consumer choice. The Company is under no obligation to assure the accuracy of this information.

5.2 Customer Inquiries Related to Emergency Situations and Outages

Retailers/DSP shall make every effort to ensure Customers contacting the Retailer/DSP regarding distribution emergency conditions, outages, safety or environment situations related to the Company's distribution system are referred directly to the Company immediately. The Company reserves the right, without providing notice to the Retailer/DSP, to test or audit the response time of the Retailer/DSP. The Company will communicate any unacceptable patterns to the Retailer/DSP to be corrected.

5.3 Customer Information

5.3.1 *Provision of Customer Usage Information to a Retailer/DSP*

The provision of Customer Usage Information to a Retailer/DSP will be as specified in AUC Rule 10.

5.3.2 *Provision of Customer Information to the Company*

The Retailer/DSP must notify the Company as promptly as reasonably practical of any changes to Customer Information, as the Company relies on this information to reasonably perform its Gas Distribution Service obligations to Customers. Such information shall be provided in a form acceptable to the Company, as agreed to by the Company and the Retailer/DSP. The Company shall not be liable for any

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loss, damages, cost, injury, expense or other liability, whether direct, indirect, consequential or special in nature, howsoever caused, as a result of the Retailer's/DSP's failure to provide up-to-date and accurate Customer Information to the Company. The Company reserves the right to assess a charge for additional processing work undertaken by the Company as a result of inaccurate Customer Information provided by the Retailer/DSP, as set forth in Schedule C hereof.

ARTICLE 6 – PROVISION OF SERVICE

6.1 Qualification for Service

6.1.1 *Qualification for Service*

The Retailer/DSP must fulfill the following requirements to the satisfaction of the Company before the Company will provide Distribution Access Service to that Retailer/DSP:

- (a) submit to the Company a fully completed, executed Distribution Access Service Agreement and a Retailer of Record and Credit Application Form as set out in the Retailer Guide;
- (b)
 - (1) for Retailers, providing Gas Services to Customers whose annual consumption is less than or equal to 2500 GJ of gas per year, furnish a certified copy of the license issued to it and warrant in writing to the Company that it is licensed pursuant to and will comply with the provisions of the Fair Trading Act, and any regulations or policies made thereunder;
 - (2) for Retailers providing Gas Service to Customers whose annual consumption greater than 2500 GJ of gas per year, warrant in writing to the Company that it will comply with the provisions of the Fair Trading Act, and any regulations or policies made thereunder.
- (c) the Retailer (excluding the DSP) must satisfy the credit requirements of the Company as set forth in Article 11 hereof;

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- (d) warrant in writing to the Company that it will comply with the guidelines established in the Retailer Guide;
- (e) meet the compliance testing protocol of the Company in respect of information exchange, which protocol is set forth in the Retailer Guide;
- (f) meet any other requirements that the Company, acting reasonably, may impose in order to provide Distribution Access Service hereunder. If the Company determines that additional requirements must be satisfied in order to qualify for Distribution Access Service, the following process will apply:
 - (1) where the Company is confronted with a situation which the Company, in its sole discretion, considers would materially alter the risk to the Company, or where the Company must impose additional requirements in order to comply with applicable legislation, the Company may implement the additional requirement and then apply to the AUC for approval of same; or,
 - (2) where the Company is not confronted with the circumstances outlined in (1), above, the Company shall apply to the AUC for approval of the proposed additional requirement prior to implementing same.

6.1.2 *Provision of Distribution Access Service*

Upon satisfaction of the above requirements, the Company will provide Distribution Access Service to the Retailer/DSP, subject to these Terms and Conditions. Subject to complying with all applicable laws, and the directions or requirements of any of those mentioned above, the Company reserves the right upon giving the Retailer/DSP ten (10) Business Days notice, acting reasonably, to discontinue Distribution Access Service to the Retailer/DSP if at any time the Retailer/DSP no longer fulfills the above requirements, subject to the provisions of Article 7.3, Article 11.2(d), Article 13 and Article 14.1(d) herein.

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6.2 Application for Site Enrollment

- (a) In order to initiate the provision of Distribution Access Service by the Company, the Retailer/DSP shall complete and provide to the Company an enrollment for Distribution Access Service in the form and manner set out in the Gas Settlement System Code. The Retailer/DSP shall provide updated Customer Information with each application for Site enrollment.
- (b) The Company will, subject to the Retailer/DSP meeting the provisions of these Terms and Conditions, accept an enrollment by a Retailer/DSP for provision of Distribution Access Service hereunder. The Company reserves the right to verify the identity of the Customer and the accuracy of the Customer Information. The Company may reject the enrollment if any information, including the Customer Information and Retailer Business Function Identification, provided by the Retailer/DSP is false, incomplete or inaccurate in any respect.
- (c) Upon receipt of a valid enrollment from a Retailer/DSP in the form and manner set out in the Gas Settlement System Code, the Company will recognize the Retailer/DSP as the Retailer of Record for that particular Site.
- (d) Enrollments will be processed by the Company on a first-come, first-served basis. Each enrollment will be time and date-stamped when received by the Company.
- (e) Enrollments will be accepted by Company from a Retailer/DSP on a daily basis. Once the enrollment is submitted, the Company will exercise reasonable efforts to provide the Retailer/DSP, in electronic form, within (2) Business Days, a status notification informing the Retailer/DSP whether the enrollment has been accepted or rejected. If an enrollment is accepted, the effective date of the acceptance and the commencement of Distribution Access Service will be in accordance with the NG Settlement System Code and will be confirmed in the response to the Retailer/DSP. If an enrollment is rejected, the Company will provide reasons for the rejection.

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- (f) In accordance with Article 12 of these Terms and Conditions, the Company will obtain meter reads from time to time. If the Company does not obtain an actual read at the time of the enrollment, the Company will estimate a meter read. At the request of the Retailer/DSP, the Company shall obtain an actual off-cycle meter read and assess a charge to the Retailer/DSP as set forth in Schedule C hereof.
- (g) If more than one enrollment is received for a Site while an earlier enrollment is pending, only the first valid enrollment received by the Company shall be processed in that period.
- (h) If a Retailer finds that it has enrolled an incorrect Site, that Retailer shall notify the Company as soon as reasonably possible. Upon receiving notice from the Retailer, the Company will notify the previous Retailer to enroll the Site.
- (i) If the Company determines that the Site (Customer) who has been enrolled with the Retailer/DSP is indebted to the Company, the Company reserves the right to disconnect Gas Distribution Service to that Customer as set forth in Article 10 hereof.
- (j) The Retailer/DSP will not be liable to the Company for any outstanding indebtedness of the Customer to the Company, which accrued prior to the receipt by the Retailer/DSP of Distribution Access Service hereunder.

ARTICLE 7 – BILLING & PAYMENT

7.1 Retailer/DSP Billing

The Company will bill the Retailer/DSP for Distribution Access Services provided to the Retailer/DSP in accordance with the billing procedures set out as follows:

- (a) For the purpose of determining the amount to be billed by the Company and paid by the Retailer/DSP for the transportation of Gas under the Distribution Access Service Agreement, the unit to be used shall be one (1) GJ.

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- (b) The Company will invoice the Retailer/DSP each billing cycle for Distribution Access Service provided by the Company for the period prior to the billing cycle; including the Imbalance Purchase/Sale amount, if any, as stipulated in Article 7.2(b) and Article 13.2 herein. The Company also reserves the right to perform off-cycle billings.
- (c) The Company will not assume any billing or collection obligations or responsibilities for or on behalf of the Retailer/DSP. The Retailer/DSP shall process Customer payments and handle collection responsibilities. The Company may, at its sole discretion and in addition to any other remedies available to it, restrict enrollment or terminate Distribution Access Service to the Retailer/DSP, if such Retailer/DSP does not pay all outstanding bills in accordance with these Terms and Conditions.
- (d) The Company reserves the right to bill the Customer directly for any amounts required to be provided by the Customer under the Terms and Conditions for Distribution Service Connections. The Retailer/DSP shall refer to Schedule C – with respect to these services.
- (e) Retailers, DSP, or any party acting as an Agent on behalf of Retailers/DSP are required to provide Customers with notification of a Company distribution rate change in the billing envelope or through the electronic billing and payment process that accompanies the first charge to the Customer at the new rate.

7.2 Payment and Collection Terms

- (a) The Retailer/DSP shall pay to the Company, on or before the 11th Business Day following the Business Day on which the Retailer/DSP was invoiced, the amount invoiced by the Company for the preceding period.
- (b) Company shall invoice, and Retailer/DSP shall pay, the monthly net Imbalance Purchase/Sale amount, if any, on the next available billing cycle following the date on which the Imbalance Purchase/Sale amount was authorized by the Company;

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- (c) The Company will establish an electronic billing and payment procedure for the payment of services hereunder. Notwithstanding, the Company will accept payment by cash or certified cheque if agreed to by the Company.
- (d) The Company has established two electronic billing options for Retailers/DSP electing to send and receive payments electronically. The Preauthorized Payment Agreement ("Authorization") and the Electronic Payment Transfer Agreement, as set out in the Retailer Guide, set forth the terms and conditions for making payments and providing remittance information electronically.
- (e) The Retailer/DSP shall pay all amounts owed to the Company for any of the Distribution Access Services (which includes Imbalance Purchase/Sale) provided by the Company whether or not the Customer has paid the Retailer/DSP.
- (f) Failure to receive a bill does not release a Retailer/DSP from the obligation to pay the amount owing for any of the Distribution Access Services provided by the Company.
- (g) The Company shall charge interest on the late payment as set forth in the Company's Rate Schedule.

7.3 Late or Unpaid Bills

- (a) If a Retailer defaults or is late in paying charges, subject to (b)(4) below, the Company will provide the Retailer notice as required below in (b)(1), and will be entitled to draw on the security of the Retailer if the Retailer's arrears are not paid within (3) three Business Days after the date of the notice. The Retailer must provide an additional deposit to replace the funds drawn down because of the default or late payment as stipulated in Article 11.2 herein.
- (b) (1) If a Retailer defaults in its payments the Company must provide the Retailer with a notice in writing stating that the Retailer is in default in its payments to the Company under the Company's Rate Schedule and these Terms and Conditions, and advising that the Company may make a claim against the

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Retailer's security if the arrears are not paid within (3) three Business Days after the date of the notice.

- (2) If after the expiry of the period set out in (b)(1) the Retailer's arrears remain unpaid, the Company may make a claim against the Retailer's security to cover the arrears. The Company may also discontinue or restrict Distribution Access Service to the Retailer with three (3) Business Day's notice if in its opinion not doing so could impair its ability to use the Retailer's security for continuing arrears or amounts that have not been billed but are owed to ATCO Gas.
- (3) If the Retailer has provided security in the form of a financial deposit, the Company may deduct from that deposit the amount of the unpaid arrears.
- (4) If in the opinion of the Company the giving of notice in accordance with (b)(1) would impair the Company's ability to make a claim against a Retailer's security or to deduct the unpaid arrears from a Retailer's financial deposit, the Company may make the claim or deduct the unpaid arrears without notice.

7.4 Adjustment of Bills

7.4.1 Billing Error

Should the Retailer/DSP dispute any amount owing, the Retailer/DSP shall nonetheless pay such disputed amount and subject the dispute for resolution in accordance with these Terms and Conditions. Following resolution of any such dispute, the Company will return any amount found owing to the Retailer/DSP forthwith. The right or ability of either party to dispute a bill for service provided hereunder shall only apply to requests in writing and are limited to a period where electronic cancel and recharge may occur. The Company may assess a charge to the Retailer/DSP for reviewing billing disputes, in circumstances where the Company has not been responsible for any billing error.

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7.4.2 *Unauthorized Use*

Where the Company determines that there has been unauthorized use of Gas Services including, but not limited to, meter or equipment tampering, unauthorized connection or reinstatement, theft or fraud whereby the Company is denied full compensation for Distribution Access Services provided, the Company will bill the Retailer/DSP for the Company's estimated delivery charges of such unauthorized use. Nothing in this Article shall limit any other rights or remedies that the Company may have in connection with such unauthorized use.

ARTICLE 8 – DISTRIBUTION ACCESS SERVICE INTERRUPTION

8.1 Continuous Supply

The Company shall make all reasonable efforts to maintain a continuous Gas supply to the Retailer's/DSP's Customers, but the Company cannot guarantee an uninterrupted Gas supply.

8.2 Interruption

Without liability of any kind to the Company, the Company shall have the right to disconnect or otherwise curtail, interrupt or reduce service to the Retailer/DSP (and the Retailer's/DSP's Customers):

- (a) whenever the Company reasonably determines that such a disconnection, curtailment, interruption or reduction is necessary to facilitate construction, installation, maintenance, repair, replacement or inspection of any segment of the Gas Pipeline System;
- (b) to maintain the safety and reliability of the Gas Pipeline System; or,
- (c) due to any other reason related to dangerous or hazardous circumstances including emergencies, forced outages, potential overloading of the Gas Pipeline System or Force Majeure.

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8.3 Reasonable Efforts

The Company shall use reasonable efforts to minimize any scheduled curtailment, interruption or reduction to the extent reasonably practicable under the circumstances, to provide the Customer with prior notification of any such curtailment, interruption or reduction to the extent reasonably practicable, and to resume Distribution Access Service as promptly as reasonably practicable.

ARTICLE 9 – DISCONTINUANCE OF DISTRIBUTION ACCESS SERVICE

This Article, as amended from time to time, specifies the processes for the transactions between the Company and the Retailer/DSP in relation to de-enrollment of a Site, which includes, without limitation, the circumstances when a Retailer chooses not to arrange for Distribution Access Service to the Customer as set forth in Article 9.1, or when the Company discontinues Distribution Access Service to the Retailer/DSP as set forth in Article 9.2 herein, or when Retailer/DSP fails to provide supply or balance its Account as set forth in Article 13 herein. This Article does not cover the provisions under which a Customer requests its meter be removed or service to be salvaged.

9.1 Discontinuance by the Retailer

- (a) To discontinue Distribution Access Service, a Retailer shall complete and provide to the Company a notice of de-enrollment of service in the form and manner set out in the NG Settlement System Code. Such notice shall clearly specify the Retailer's reason(s) for seeking to de-enroll the Site.
- (b) In accordance with Article 12 of these Terms and Conditions, the Company will obtain meter reads from time to time. If the Company does not obtain an actual read at the time of the de-enrollment, the Company will estimate a meter read. At the request of the Retailer, the Company shall obtain an actual off-cycle meter read and assess a charge to the Retailer as set forth in Schedule C hereof.
- (c) The Company may reject the notice from the Retailer of the de-enrollment of any Site or Customer if any information provided in the notice, including the Customer

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Information, provided by the Retailer is false, incomplete or inaccurate in any respect.

- (d) The Retailer is responsible to ensure that its Customers are provided notice of the de-enrollment, and the consequences thereof, and that the Company will not be held liable for any Customer disputes with the Retailer.
- (e) Upon receipt of a valid notice of de-enrollment of Distribution Access Service from a Retailer in the form and manner set out in the Gas Settlement System Code, the Company will accept the de-enrollment request of the Retailer and will notify the Default Supply Provider of the pending transaction. If the site is not enrolled by a replacement Retailer within the period set out in the Retailer Guide, the Company will notify the DSP to enroll the site.
- (f) The Retailer shall remain responsible for Gas Services to the Site until a replacement Retailer/DSP is enrolled and in place for the Site.
- (g) The Retailer may revoke a notification to de-enroll a Site as set out in the Retailer Guide.

9.2 Discontinuance by the Company

9.2.1 Discontinuance of DSP

The Company may discontinue or restrict Distribution Access Service to the DSP if any of the following occur:

- (a) the DSP has failed to meet its obligations under these Terms and Conditions or the Distribution Access Service Agreement with the Company.

9.2.2 Discontinuance of Retailer

The Company may discontinue or restrict Distribution Access Service to the Retailer if any of the following occur:

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- (a) the Retailer has failed to meet its obligations under these Terms and Conditions or the Distribution Access Service Agreement with the Company,
or
- (b) the Retailer has failed to meet its credit requirements pursuant to Article 11,
or
- (c) the Retailer has failed to meet its obligations pursuant to Article 13,
or
- (d) the Retailer's license has been revoked by Service Alberta .

9.2.3 *Notice of Discontinuance*

Notification of discontinuance will be made electronically to the Retailer/DSP. The Company will provide the Retailer/DSP notice before the Company discontinues Distribution Access Service to the Retailer/DSP, subject to the provisions of these Terms and Conditions. Upon discontinuance of Distribution Access Service to a Retailer pursuant to this Article, the provision of the affected service(s) will be assumed by the DSP.

ARTICLE 10 – SERVICE DISCONNECTS AND REINSTATEMENT

This Article, as amended from time to time, specifies the processes for the transactions between the Company and the Retailer/DSP in relation to the physical disconnect of a Point of Delivery.

10.1 Disconnection of Service

10.1.1 Disconnection by the Company

- (a) The Company reserves the right to disconnect Gas Distribution Service to the Customer in a number of circumstances, including but not limited to non-payment of the Company bills or any past due charges by the Customer; evidence of safety violations or fraud by the Customer; threats or harassment of employees or agents of the Company , failure to provide access for meter readings, or the Customer failing to meet its obligations under the Terms and

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Conditions for Distribution Service Connections or any of the terms of the Customer's Natural Gas Service Agreement.

- (b) If the disconnect is a result of a safety violation, the Company will reinstate the service when the safety problem is resolved and when the Customer has provided, or paid the Company's costs of providing, such devices or equipment as may be necessary to resolve such safety problem and to prevent such damage, interference or disturbance. The Company may assess a reinstatement charge to the Retailer/DSP as set forth in Schedule C hereof.

10.1.2 Disconnection at Request of Retailer/DSP

- (a) In accordance with subsection 5(1) of the R3 Regulation, the Retailer/DSP shall have the right to request that the Company disconnect service to a particular Customer or Site, and the Company shall comply with that request, unless such action is inconsistent with the Company's approved policies contained in Schedule B to these Terms and Conditions.
- (b) The Retailer/DSP shall remain responsible for all Gas Services to the Customer until a replacement Retailer/DSP has enrolled the Customer at the Site.
- (c) The Company will notify the Retailer/DSP if a disconnect request was not successfully completed and include the reason why it was not successfully completed. If the Retailer/DSP still requires a disconnect, the Retailer/DSP must re-issue a disconnect request.
- (d) The Company shall not be liable to any person for any damages, cost, expense, injury, loss or other liability of any kind whatsoever, or however caused, resulting directly or indirectly from its good faith performance of its responsibilities under the provisions of this Article.

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10.2 Reinstatement Service

Before reinstating or restoring service to a particular Site:

- (a) the Retailer/DSP must provide the Company with authorization to reinstate service;
- (b) if the reason for the reinstatement request is to resume access service after a Site was Cut Off for Non-Payment ("CONP") to the Customer's Retailer/DSP, and the Customer Information on the reinstatement request matches the Customer Information on the original CONP disconnect request, then the Company will not reinstate until such time as a disconnect release is received by the Company from the Retailer/DSP that issued the disconnect request. Such release shall be sent to the Company within 24 hours of the Retailer/DSP receiving payment.
- (c) the Retailer/DSP or Customer must provide proof of compliance with Article 12 of the Terms and Conditions for Distribution Service Connections.
- (d) the Company reserves the right to assess a reinstatement charge as set forth in Schedule C hereof, pursuant to this Article.

ARTICLE 11 – PRUDENTIAL REQUIREMENTS

In circumstances where the Retailer has multiple Retailer Identification numbers, the review, setting and maintaining of prudential requirements shall be based on the Retailer Business Function Identification level.

11.1 Setting of Prudential Requirements

- (a) The Retailer must fulfill the requirements as set forth in this Article to the satisfaction of the Company before the Company will provide Distribution Access Service to that Retailer.
- (b) Subject to review and reassessment of the Prudential Requirements of a Retailer by the Company from time to time, a Retailer shall meet and maintain such financial and other Prudential Requirements as set out in the Natural Gas Billing

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Regulation, A.R. 185/2003, as amended from time to time, to ensure that the Retailer is and remains of sufficient financial standing to meet its ongoing financial obligations.

- (c) The Company will confirm the credit rating of the Retailer, affiliate or person which guarantees the financial obligation of the Retailer. The credit rating will mean the bond rating according to Standard and Poor's Bond Rating Service or an equivalent bond rating from Dominion Bond Rating Service or Moody's Investors Service.

The minimum credit rating that will qualify a Retailer for a reduction in security or allowing a person to provide an irrevocable guarantee of the Retailer's financial obligation is BBB-, as set out in Section 6(3) of the Natural Gas Billing Regulation A.R 185/2003 as amended from time to time.

If a Retailer has obtained more than one credit rating, the lowest credit rating will be used in the assessment.

- (d) Subject to review and reassessment, the Company shall determine the amount of the security reduction available for each Retailer, and the maximum amount of any guarantee required from the person guaranteeing the financial obligations of the Retailer, subject to sections 5, 6 and 7 of the Natural Gas Billing Regulation, A.R. 185/2003, as amended from time to time. The Company shall notify the Retailer of its security requirement within 20 (twenty) Business Days from the receipt of the Retailer's complete application for service.
- (e) For the purposes of calculating the amount of the Retailer's security deposit pursuant to section 5(2) of the Natural Gas Billing Regulation, A.R. 185/2003, as amended from time to time, the Retailer must project its payments under the Company's Rate Schedule over a period equal to the lesser of (A) 75 days, or (B) the total of (i) 20 days, plus (ii) the number of days between consecutive bills issued by the Company to the Retailer, plus (iii) the number of days from the issuance of a bill by the Company until payment is due from the Retailer.

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- (f) For the purposes of calculating the amount of the Retailer's security deposit required, the Retailer will add an additional 20 days of projected payments (the Load Balancing Security) under the Company's Rate Schedule to the amount of security deposit required under the Natural Gas Billing Regulation A.R. 185/2003, as amended from time to time as identified in part (e) above which shall serve as separate security in respect of any Imbalance Sales that ATCO Gas may be required to charge the Retailer in order to balance their accounts.
- (g) Subject to section 6 of the Natural Gas Billing Regulation, A.R., 185/2003, as amended from time to time, the Retailer shall provide security in the manner set out in the Retailer Guide, in the form of a financial deposit, a bond, an irrevocable letter of credit or an irrevocable guarantee. An irrevocable guarantee may only be provided from a person, other than the Retailer, with a qualifying credit rating.

11.2 Maintaining Prudential Requirements

- (a) If a Retailer's actual outstanding charges under the Company's Rate Schedule and these Terms and Conditions are materially greater than the value projected by the Retailer under Article 11.1 of these Terms and Conditions, the Company will update the projection and, if additional security is required based on the updated projection, require the Retailer to provide additional security within five (5) Business Days of the Company's request.
- (b) The Company requires Retailers to report any downgrading of their corporate bond rating to the Company within two (2) Business Days of said rating revisions, and must provide any additional security required as a result of the downgrading within five (5) Business Days of the downgrading.
- (c) If a Retailer fails to pay any amount billed, subject to Article 7.3 of these Terms and Conditions, the Company will apply all or any portion of that Retailer's security deposit to the unpaid amount. The Retailer will then be required to replenish the security deposit within five (5) Business Days.
- (d) If the Retailer fails to maintain its prudential requirements in accordance with

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Article 11 the Company reserves the right to suspend the provision of additional Distribution Access Service to the Retailer, or discontinue Distribution Access Service to the Retailer. The Company will provide the Retailer notice of discontinuance three (3) Business Day before the Company discontinues Distribution Access Service to the Retailer. Upon discontinuance of Distribution Access Service to a Retailer pursuant to this Article, provision of the affected service(s) will be assumed by the DSP.

- (e) A Retailer that is required to provide security in accordance with the *Natural Gas Billing Regulation*, AR 185/2003, as amended from time to time, and these Terms and Conditions must maintain that amount of security until all obligations of the Retailer under the Company's Distribution Tariff are satisfied. A Retailer who provides security other than by means of a financial deposit held by the Company, must either ensure that its security has no expiry date and cannot be terminated, or must at all times ensure that its security is automatically extended from year to year, for successive periods of a minimum of one year from any expiration date thereof, unless the Company is notified in writing by prepaid registered mail not less than 30 days prior to any expiration date that the security will not be renewed for any such additional period ("Notice of Non-Renewal").

- (f) Upon receipt of a Notice of Non-Renewal, the Company shall provide notice of same in writing to the Retailer advising that the Retailer's failure to provide the Company with alternate security meeting the requirements set out in the *Natural Gas Billing Regulation*, AR 185/2003, within 3 business days after the date of the notice shall be in breach of the Retailer's obligation to maintain its security in accordance with s.8 of the *Natural Gas Billing Regulation*, AR 185/2003, and an event of default under Article 14.1(d) of these Terms and Conditions. If after 3 business days the Company is not in receipt of such alternate security, the full amount of the Retailer's security determined in accordance with Article 11.1 of these Terms and Conditions shall become due and payable to the Company and the Company shall be entitled to make demand or claim against the Retailer's security in accordance with Article 14.3.

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- (g) In the event of a default by a Retailer, the Company is entitled to recover as part of the Gas Distribution Tariff any costs not covered by a claim against the Retailer's security under section 9 of the Natural Gas billing Regulation AR 185/2003 as amended from time to time.

11.3 Confidentiality

All information provided by the Retailer in relation to its financial standing and designated by the Retailer as confidential will be treated as such under the Confidentiality Agreement between the Retailer and the Company. The terms and conditions of the Confidentiality Agreement are set out in the Retailer Guide.

11.4 Costs

All costs associated with obtaining financial security and meeting prudential requirements under this Article are the responsibility of the Retailer.

11.5 Interest on Security Deposits

Interest on each Retailer's cash security deposit held by the Company will be calculated at the rate specified from time to time in the *Residential Tenancies Act, R.S.A. 2000, c.R-17*, but not less than 2.5% per annum. Interest will be paid to the Retailer annually.

ARTICLE 12 – METERING

12.1 Provision and Ownership

The meters used by the Company to assess the level of Distribution Access Service charges to the Retailer/DSP will be the same meters used to provide Customer Billing Information to the Retailer/DSP. The Company will provide and install all meters for each Point of Delivery of a Customer of the Retailer/DSP in accordance with the Company's Terms and Conditions for Distribution Service Connections. Each meter shall remain the property of the Company.

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12.2 Meter Reading

Billing will be based on meter readings made by the Company from time to time or on estimates for those billing periods when the meter is not read. The Company reserves the right to assess a charge to the Retailer/DSP for additional reads above the Company's standard practices as set forth in Schedule C hereof.

12.3 Changes to Metering Equipment

- (a) Notwithstanding Article 3.7, should a Retailer/DSP request or consent to a Customer request for new metering equipment beyond the basic service, the Company shall provide, install, test and maintain the required metering equipment. The metering equipment must be requested or consented to in writing by the Retailer/DSP and meet the Company's requirements. The Retailer/DSP shall bear the cost of providing and installing the metering equipment, and ongoing operating costs as set forth in Schedule C hereof.

The metering equipment will remain the property of the Company and will be maintained by the Company. The Company shall complete installation of the metering equipment within thirty (30) days of delivery from the supplier. The Company shall bill the Retailer/DSP upon installation, and the Retailer/DSP shall pay the Company in full as per the terms stated on the invoice. If payment is not received as per the terms stated on the invoice, the Company shall charge interest on the late payment as per the terms stated on the invoice. Article 7.3 herein will also apply in the event of late or unpaid bills.

- (b) Notwithstanding Article 3.7, should a Retailer/DSP request or consent to a Customer request to return the metering equipment to its previous basic form, the Retailer/DSP shall bear the cost of removal and installation of the metering equipment.
- (c) At the request of a Retailer/DSP, or with the Retailer's/DSP's consent, the Company may provide other metering services, above standard metering service,

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in its discretion, acting reasonably, and may charge separate fees for such services.

12.4 Meter Test and Adjustments

- (a) The Company may inspect and test a meter at any reasonable time. The Company shall arrange for a meter to be removed and tested by an official designated for that purpose by Measurement Canada or an accredited agency as may, from time to time, be designated for this purpose in the event of a Customer initiated meter test..
- (b) If a test determines that the meter is not accurate within the limits set by government standards, the Retailer's/DSP's bill will be adjusted accordingly. Where it is impossible to determine when the error commenced, it shall be deemed to have commenced three (3) months before the test or the date of the meter installation, whichever occurred later. The Company shall not be liable to the Retailer/DSP for any additional costs that are associated with such metering or meter reading errors.
- (c) The Company reserves the right to assess a charge to the Retailer/DSP for a meter test, in circumstances where the Company has not been responsible for any metering error, as set forth in Schedule C hereof. This charge does not apply to circumstances when the meter tested is found to be faulty.
- (d) If any appliance of a Customer connected to the Gas Pipeline System prevents or impedes the meter from accurately recording the total amount of energy supplied, the Company may forthwith disconnect the Customer, or disconnect such appliance from the Gas Pipeline System and shall, in either case, estimate the amount of energy consumed and not registered, as accurately as it is able to do so and charge the Retailer/DSP.

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ARTICLE 13 – ACCOUNT BALANCING

13.1 Retailer/DSP Account

- (a) The Retailer/DSP Account shall be accumulated and recorded by Company each Day and, without limitation, shall include such items as Gas supply Nominations, Retailer Load, Imbalance quantity, opening Imbalance quantity, previous Month(s) true-up quantity(ies), Retailer/DSP's share of Company's Unaccounted For Gas and/or other adjustment quantity(ies) deemed appropriate as determined by the Company from time to time.
- (b) Each Day the Company shall Forecast and Backcast Retailer's Load according to the practices specified in the Company's Retailer Guide.
- (c) The Retailer/DSP shall provide in kind Unaccounted For Gas each Day at the rate specified in Rider D.
- (d) The Company shall make the Account available to the Retailer/DSP in the manner described in the Retailer Guide.
- (e) The Retailer/DSP shall be required to hold one Account for each of the north zone and south zone corresponding to Retailer/DSP's aggregate north zone and aggregate south zone Customers, as applicable.

13.2 Exchange of Gas

- (a) The Retailer/DSP warrants that it will make its Gas supply available in an Account on the Transmission System and that the Company will make that Gas available in the Retailer/DSP's Account by means of an exchange with that Account on the Transmission System and the FSU Account, subject to the procedures described in the Retailer Guide.

13.3 Daily Retailer/DSP Account Balance

- (a) For each Gas Day, the energy quantity of the Retailer/DSP Account Imbalance Window shall be calculated by multiplying the daily Backcast by the \pm Imbalance

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Window percentage specified on Schedule D and rounded to the nearest GJ, provided that the resultant is not less than the minimum energy Imbalance Window specified on Schedule D.

- (b) The Retailer/DSP shall at all times endeavor to maintain its daily Account Imbalance energy within the quantity specified by the daily Imbalance Window.
- (c) For each Gas Day, in the event the absolute value of the Retailer/DSP Account daily Imbalance energy is greater than the absolute value of the quantity specified by the daily Imbalance Window, the difference quantity shall be settled by Imbalance Purchase/Sale at the price specified on Schedule D.
- (d) The net quantity and dollars resulting from the Imbalance Purchase and Imbalance Sales transactions in (c), if any, will be invoiced to Retailer/DSP once per Month as specified in Article 7.

13.4 Retailer/DSP Account Monitoring Rules

The Company shall perform monitoring of the Retailer/DSP's Account according to the following:

- (a) Step 1
 - i. If there is no evidence of a Nomination in the Retailer's Account by 10:00 a.m. local time of the current Gas Day (Gas Day 1), which has not been pre-authorized by the Company, the Company will attempt to contact the Retailer for an explanation. If the Retailer indicates in writing (by email or FAX) that it intends to balance the Account within the Account Balancing timeline specified in the Retailer Guide, then the Company will take no further action at Step 1. For the purposes of this clause, "balance the Account" means the Retailer provided sufficient gas supply for Gas Day 1 such that the resulting Account Imbalance on Gas Day 1 was within the Imbalance Window and no Imbalance Purchase/Sale was triggered.
 - ii. If at (a)(i) above:

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1. the Company, with reasonable effort by telephone and email, is unable to contact the Retailer by the time of the release of the F3 Forecast for Gas Day 1, or
2. the Retailer has indicated an inability to make Nominations to its Account for Gas Day 1, or
3. there continues to be no evidence of a Nomination in the Retailer's Account by the time of the release of the F3 Forecast for Gas Day 1,

then the Company will transact on the Same Day Market based on the F3 Forecast for Gas Day 1. The transaction(s) will be recorded in the FSU Account, not the Retailer's Account, and charged to the LBDA. The Retailer's Account will be closed for the remainder of Gas Day 1 and the rules related to Imbalance Purchase/Sale as stipulated in these Terms & Conditions will be in effect for the Retailer's Account on Gas Day 1.

(b) Step 2

- i. If there is no evidence of a Nomination in the Account by 10:00 a.m. local time of the Gas Day following Gas Day 1 (i.e. Gas Day 2), which has not been pre-authorized by the Company, the Company will attempt to contact the Retailer for an explanation. This rule will also apply to those Retailers who made a commitment to balance their Account in Step 1, but did not fulfill that commitment, even if a nomination was made for Gas Day 1. The Retailer will be required to nominate gas supply equal to the F3 Forecast for Gas Day 2 no later than one half ($\frac{1}{2}$) hour after the F3 Forecast has been issued.
- ii. If at (b)(i) above
 1. the Company, with reasonable effort by telephone and email, is unable to contact the Retailer by the time of one half ($\frac{1}{2}$) hour after the release of the F3 Forecast for Gas Day 2, or
 2. the Retailer has indicated an inability to make the Nominations to its Account for Gas Day 2, or

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3. the gas supply in the Retailer's Account does not equal the F3 Forecast energy by the time of one half ($\frac{1}{2}$) hour after the release of the F3 Forecast for Gas Day 2,

then the Company will transact on the Same Day Market based on the F3 Forecast for Gas Day 2. The transaction(s) will be recorded in FSU Account, not the Retailer's Account, and charged to the LBDA. The Retailer's Account will be closed for the remainder of Gas Day 2 and the rules related to Imbalance Purchase/Sale as stipulated in these Terms & Conditions will be in effect for the Retailer's Account on Gas Day 2.

The Company will also provide electronic notice to the Retailer indicating that unless the Retailer takes action to provide gas supply to its Account sufficient to alleviate Company's concerns by 10:00 a.m. local time of the next Gas Day (i.e. Gas Day 3), the Company intends to permanently close the Retailer's Account during Gas Day 3.

(c) Step 3

If there is no evidence of a Nomination in the Retailer's Account by 10:00 a.m. local time of the current Gas Day (Gas Day 3), which has not been pre-authorized by the Company, the Company will provide electronic notice to the Retailer that its Account is permanently closed. The Company will commence de-enrollment of Sites associated with the Retailer's Account during Gas Day 3 to first take effect on Gas Day 4.

The Company will transact on the Same Day Market based on the F3 Forecast for Gas Day 3. The transaction(s) will be recorded in the FSU Account, not the Retailer's Account, and charged to the LBDA. The rules related to Imbalance Purchase/Sale as stipulated in these Terms & Conditions will be in effect for the Retailer's Account.

(d) Step 4

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The Company will continue to transact in the Same Day Market based on the F3 Forecast for the Retailer who has defaulted until all the Retailer's Sites have been de-enrolled and successfully re-enrolled with the DSP. The transaction(s) will be recorded in the FSU Account, not the Retailer's Account and the rules related to Imbalance Purchase/Sale as stipulated in these Terms & Conditions will be in effect. When all of the defaulting Retailer's Sites have been successfully enrolled with the DSP, the termination of Distribution Access Service will be complete and Company will not undertake any further transactions on behalf of the defaulting Retailer. The Company will continue to apply the rules related to Imbalance Purchase/Sale to the Retailer's Account as a result of adjustments related to settlement or other matters which occur after the Retailer's Account has been permanently closed.

(e) Step 5

In the event of non-payment on the part of the Retailer, and without limiting the Company's rights or remedies at law or in equity, the Company shall have the right to recover any charges to a Retailer by claiming against the Retailer's or Agent's performance bond (as stipulated in Article 11 of these Terms and Conditions) which exists to secure due performance by the Retailer or Agent of its obligation under the Distribution Access Service Agreement.

(f) The Account monitoring rules described above will also be used to monitor the DSP Account to provide early detection of issues that may result in obligations under the terms specified in the commercial arrangements between the Company and the DSP.

(g) In the event that the Company is notified by the Retailer in writing (by email or FAX) or in the event that the Company becomes aware that the Retailer has declared itself or has been declared to be insolvent prior to the full three days of Account monitoring described in this section, the Company shall have the right to discontinue Distribution Access Service with one (1) Business Day's notice.

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13.5 Termination of Retailer Service

- (a) These Terms and Conditions shall continue in force until all the Retailer's Sites have been de-enrolled and Final Monthly Settlement for the Retailer's Account has been completed, whereupon Company shall terminate the Retailer's Account. The Company will continue to transact in the Same Day Market based on the F3 Forecast for the Retailer who has defaulted until all the Retailer's Sites have been de-enrolled and successfully re-enrolled with the DSP. The transaction(s) will be recorded in the FSU Account, not the Retailer's Account and the rules related to Imbalance Purchase/Sale as stipulated in these Terms & Conditions will be in effect.
- (b) Notwithstanding the provisions of (a), upon mutual agreement, the Retailer and the Company may enter into an arrangement to settle the outstanding energy amounts in the Retailer's terminating Account, including without limitation, the Account closing Imbalance and adjustments to the Account from Gas Settlement, in a manner that is different than is normally required under the provisions of these Terms and Conditions and/or the Retailer Guide.

13.6 Request for Additional Information

A Retailer may request additional settlement information above the basic service provisions specified in the Retailer Guide or information previously provided by the Company if:

- (a) the Retailer provides a written request to the Company outlining the purpose for the additional settlement information; and
- (b) the additional settlement information applies only to the Customers of the Retailer.

Upon satisfaction of the above requirements, the Company will advise the Retailer in a written proposal of the type of work, time of delivery and charges necessary to provide the additional settlement information to the Retailer.

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13.7 Liability

The Company shall not be liable to any person for any damages, cost, expense, injury, loss or other liability of any kind whatsoever, or however caused, resulting directly or indirectly from its good faith performance of its responsibilities under the provisions of this Article. No express or implied warranties of any kind shall apply to information or services provided by the Company to any person as part of such good faith performance, including without limitation implied warranties of fitness for a particular purpose.

ARTICLE 14 – DEFAULT

14.1 Events of Default

An event of default under these Terms and Conditions and the Distribution Access Service Agreement will occur if either the Company, the DSP or the Retailer (“Defaulting Party”):

- (a) is the subject of a bankruptcy, insolvency or similar proceeding;
- (b) makes an assignment for the benefit of its creditors;
- (c) applies for, seeks, consents to, or acquiesces in the appointment of a receiver, custodian, trustee, liquidator or similar official to manage all or a substantial portion of its assets;
- (d) fails to pay the other party (“Non-Defaulting Party”) when payment is due, or to satisfy any other material obligation under these Terms and Conditions or the Distribution Access Service Agreement including, without limiting the generality of the foregoing, fulfilling the prudential requirements as set forth in Article 11, in accordance with these Terms and Conditions, and fails to remedy the failure or satisfy the obligation, as the case may be, within three (3) Business Days after receipt of written notice thereof from the Non-Defaulting Party;
- (e) fails to balance its Account in accordance with Article 13.

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14.2 Rights Upon Default

In an event of default, the Non-Defaulting Party shall, subject to these Terms and Conditions and any applicable regulatory requirements, be entitled to pursue any and all available legal and equitable remedies and terminate the Distribution Access Service Agreement. Where the Defaulting Party is the Company or the Retailer and the Non-Defaulting Party elects to terminate, the Distribution Access Service Agreement is terminated without any liability or responsibility whatsoever, except for obligations arising prior to the date of termination. The Non-Defaulting Party shall provide written notice to the Defaulting Party of its intention to terminate Distribution Access Service hereunder.

14.3 Recourse to Security Upon Retailer Default

In addition to any other rights and remedies set out herein, in an event of default by the Retailer, other than a default in payment addressed under section 9 of *Natural Gas Billing Regulation*, AR 185/2003, the full amount of the Retailer's security determined in accordance with article 11.1 of these terms and conditions shall become due and payable to the Company and the Company shall be entitled to make demand or claim against the Retailer's security for the full amount secured thereunder. All funds received by the Company in respect of such claim shall be retained by the Company and applied against the Retailer's obligations hereunder until such time as all of the Retailer's obligations have been determined and satisfied. Any balance remaining after satisfaction of the Retailer's obligations shall be returned to the issuing party of the security for the benefit of the Retailer.

14.4 Termination on Default

If any one or more of the parties to the Distribution Access Service Agreement fails to perform any of the covenants or obligations imposed upon it under and by virtue of the Distribution Access Service Agreement (the "Defaulting Party"), then in any such event, the other party or parties to the Distribution Access Service Agreement (the "Non-Defaulting Party") may at its option terminate the Distribution Access Service Agreement insofar and only insofar as the Distribution Access Service Agreement pertains to the Defaulting Party by proceeding as follows:

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- (a) The Non-Defaulting Party shall cause a notice in writing or fax to be given to the Defaulting Party advising as to the nature of any default and declaring it to be the intention of the Non-Defaulting Party to terminate the Distribution Access Service Agreement.

ARTICLE 15 – IMPAIRED DELIVERIES

15.1 Impaired Deliveries

If by reason of the causes set forth in this Article, the Company is unable, in whole or in part, to deliver the quantities of Gas provided for in the Distribution Access Service Agreement, then the Company shall be relieved of liability for not delivering such quantities, and the Company may curtail or discontinue deliveries of Gas under the Distribution Access Service Agreement during the continuance and to the extent of the inability; provided however that the Company shall endeavor to give reasonable notice of any curtailment or discontinuance of deliveries arising by virtue of such causes and shall promptly endeavor to remedy the cause of any curtailment or discontinuance of deliveries as soon as reasonably possible. Such notice shall specify the Company's estimate of the duration of any such curtailment or discontinuance of deliveries under the Distribution Access Service Agreement. The causes above referred to shall be:

- (a) the necessity, in the Company's sole opinion, of making modifications or improvements to the Gas Pipeline System; provided however that the Company shall, when practicable, endeavor to effect such modifications or improvements, which are not emergency in nature, at a time and in a manner which shall not unduly interfere with or interrupt deliveries of Gas; or
- (b) the necessity of making repairs to the Gas Pipeline System.

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ARTICLE 16 – LIABILITY AND INDEMNITY

16.1 Indemnity

- (a) Each party (as applicable, the "Indemnitor") will indemnify and hold harmless the other party and its directors, officers, employees, agents and representatives ("Indemnitee(s)") from and against any direct damages, injuries, losses and other liabilities claimed against the Indemnitee or any of them, and all related costs and expenses (including reasonable legal fees) suffered or incurred by any of them in relation to any claim, cause of action, action, suit or proceeding by a third party ("Claim") which arises from damage to property or injury to or death of persons resulting from the Indemnitor's failure to perform its obligations under these Terms and Conditions which failure is caused by the negligence or willful act of the Indemnitor or any of its directors, officers, employees, agents or representatives acting within the scope of their authority or employment. The indemnity under this Article will be limited to an amount in proportion to the degree to which the Indemnitor or its directors, officers, employees, agents or representatives acting within the scope of their authority or employment are at fault. For the purpose of this Article "willful act" means any act or omission which is an intentional tort or an intentional breach of any obligations under these Terms and Conditions.
- (b) In the event that an Indemnitee is entitled to and desires to assert its right to indemnification from an Indemnitor under this Article 16.1 such Indemnitee will give the Indemnitor prompt notice of the Claim, which shall describe the Claim in reasonable detail and shall indicate the estimated amount, if practicable, of the indemnifiable loss that has been or may be sustained by the Indemnitee. The failure to promptly notify the Indemnitor hereunder shall not relieve the Indemnitor of its obligations hereunder, except to the extent that the Indemnitor is actually and materially prejudiced by the failure to so notify promptly.
- (c) Subject to Article 16.1(d) hereof, if the Indemnitor delivers to the Indemnitee a written acknowledgement of its unconditional and irrevocable obligation to indemnify the Indemnitee under Article 16.1(a) in respect of:

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- (1) all of the damages, injuries, losses, liabilities, costs and expenses that may be claimed against, or suffered or incurred by, the Indemnitee in respect of the Claim within 10 days following the Indemnitor's receipt of the Indemnitee's notice of such Claim and if the existence of such obligation to indemnify is made known by the Indemnitor to the third party claimant (and, if applicable, to the court or other tribunal determining the Claim), the Indemnitee shall make available to the Indemnitor all information in its possession or to which it has access, other than information that has been designated as confidential by the provider of such information, which is or may be relevant to the particular Claim and the Indemnitor shall be entitled, at its option, to take carriage of the defense of the Claim by its own counsel and, if it elects to do so, the Indemnitee shall cooperate with the Indemnitor to the fullest reasonable extent in the defense, settlement or compromise of the Claim; or
- (2) some, but less than all, of the damages, injuries, losses, liabilities, costs and expenses that may be claimed against, or suffered or incurred by, the Indemnitee in respect of the Claim within 10 days following the Indemnitor's receipt of the Indemnitee's notice of such Claim and if the Indemnitee is of the opinion that the Indemnitor's interests are not in conflict with its own, the Indemnitee shall make available to the Indemnitor all information in its possession or to which it has access, other than information that has been designated as confidential by the provider of such information, which is or may be relevant to that portion of the Claim in respect of which the Indemnitor has an obligation to indemnify the Indemnitee and consult with the Indemnitor in respect thereof.

The Indemnitee shall not make any admission of the liability regarding, or settle or compromise, that portion of the Claim in respect of which the Indemnitor has acknowledged its obligation to indemnify the Indemnitee without the written consent of the Indemnitor, which consent shall not be unreasonably withheld.

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- (d) The provisions of Article 16.1(a) hereof shall not apply in respect of any Claim to which the Indemnitor is, or may reasonably be expected to be, a party and where the Indemnitee is asserting legal defenses in relation to the Claim that conflict with legal defenses being asserted by the Indemnitor.
- (e) Except to the extent to which either party is required to indemnify the other party (and those other persons specified in this Article 16) by the express terms of Article 16, neither party, nor its directors, officers, agents, employees, and representatives, will be liable to the other party for any damages, costs, expenses, injuries, losses, or liabilities suffered or incurred by the other party, its directors, officers, employees, agents and representatives howsoever and whenever caused, and each party, for itself and as agent for its directors, officers, agents, employees and representatives hereby forever releases the other party, its directors, officers, agents, employees and representatives from any liability or obligation in respect thereof. For greater certainty, neither party shall be limited in a claim against the other for specific performance or other equitable relief in relation thereto, or direct damages only and related costs and expenses (including reasonable legal fees), arising from a breach of these Terms and Conditions.

16.2 Consequential Loss

Notwithstanding anything to the contrary contained in these Terms and Conditions, neither party will be liable to the other party, and the Company shall not be liable to the Customer with respect to matters for which the party is acting as agent for the Customer, for any damage, cost, expense, injury, loss or other liability of an indirect, special or consequential nature suffered by the other party or claimed by any third party against the other party which arises due to such party's failure to perform its obligations under these Terms and Conditions or for any other reason (including negligence on its part or on the part of any person for whose acts it is responsible), howsoever and whensoever caused, and whether arising in contract, negligence or other tort liability, strict liability or otherwise; and without limiting the generality of the foregoing, damage, injury or loss of an indirect or consequential nature shall include loss of revenue, loss of profits, loss of

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production, loss of earnings, loss of contract, cost of purchased or replacement capacity and energy, cost of capital and loss of the use of any segment of the Gas Pipeline System or property owned, operated, leased or used by the other party.

ARTICLE 17 – FORCE MAJEURE

17.1 Force Majeure Relief

The Company or Retailer/DSP, as the case may be, is relieved of its obligations hereunder, and shall not be liable for any failure to perform any term of these Terms and Conditions to the extent that and when such failure is due to, or is a consequence of, any event of Force Majeure.

Retailer/DSP shall not be relieved by Force Majeure as described in this Article 17 from the obligation to pay the charges set forth pursuant to this Article unless Force Majeure has been invoked by the Company.

17.2 Exclusions

Notwithstanding the definition of Force Majeure, lack of funds shall not be an event of Force Majeure.

17.3 Notice

The party claiming relief from liability under the provisions of this Article 17 shall promptly give the other party notice of the Force Majeure including full particulars thereof and shall promptly give the other party notice when the Force Majeure event ceases to prevent performance pursuant to these Terms and Conditions.

17.4 Obligation to Remedy

The party claiming relief from liability under the provisions of this Article 17 shall promptly remedy the cause and effect of the Force Majeure insofar as it is reasonably able to do so.

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17.5 Strikes and Lockouts

Notwithstanding any other provision of these Terms and Conditions the settlement of any strike, lockout or other industrial disturbance shall be wholly in the discretion of the party claiming relief from liability and such party may settle such strike, lockout or industrial disturbance at such time and on such terms and conditions as it may deem appropriate and no failure or delay in settling such strike, lockout or industrial disturbance shall constitute a cause or event within the control of such party or deprive such party of the benefits of this Article 17.

ARTICLE 18 – DISPUTE RESOLUTION

18.1 Resolution by Company and Retailer/DSP

If any dispute between the Company and a Retailer/DSP arises at any time in connection with these Terms and Conditions, the Company and the Retailer/DSP acting reasonably and in good faith, shall use all reasonable efforts to resolve the dispute as soon as possible in an amicable manner.

18.2 Resolution by Arbitration

If any dispute has not been resolved pursuant to Article 18.1 hereof within 30 days after notice from the Company or the Retailer/DSP to the other of its desire to have the dispute resolved, then the dispute shall be resolved pursuant to Articles 18.3 to 18.11 hereof. The Company and the Retailer/DSP shall abide by the terms of any award rendered by the arbitrator(s) appointed hereunder without delay.

18.3 Arbitrators

All disputes or differences between the Company and a Retailer/DSP in connection with these Terms and Conditions shall be referred (unless the Company and the Retailer/DSP concur in the appointment of a single arbitrator) to a board of arbitrators consisting of one (1) arbitrator to be appointed by each of the Company and the Retailer/DSP who shall, by instrument in writing, appoint a third arbitrator immediately after they are themselves appointed. Notwithstanding the foregoing, any disputed

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matters between the Company and a Retailer/DSP relating to an order or direction made or approved by the AUC or falling within the exclusive jurisdiction of the AUC, shall be referred to the AUC for resolution.

18.4 Failure to Concur

The Company and a Retailer/DSP shall be deemed to have failed to concur in the appointment of a single arbitrator if such an arbitrator shall not have been appointed within fifteen (15) days after the serving by either the Company or the Retailer/DSP on the other of notice requesting it to concur in the appointment of such an arbitrator.

18.5 Refusal to Appoint an Arbitrator

If either the Company or the Retailer/DSP shall neglect or refuse to appoint an arbitrator within fifteen (15) days after the other party (provided such other party has appointed its arbitrator) has served the Company or the Retailer/DSP, as the case may be, with notice to make the appointment, the party who has appointed its arbitrator shall be entitled to apply, upon notice to the other party, to a Justice of the Court of Queen's Bench of Alberta to appoint an arbitrator for the party in default.

18.6 Failure to Appoint a Third Arbitrator

If the arbitrators appointed by the Company and the Retailer/DSP have not, within fifteen (15) days after their appointment or the appointment of the arbitrator last appointed, as the case may be, appointed a third arbitrator, either the Company or the Retailer/DSP shall be entitled to apply upon notice to the other party to a Justice of the Court of Queen's Bench of Alberta to appoint such an arbitrator.

18.7 Technical Competence

Any arbitrator appointed under the provisions of this Article whether by concurrence of the Company and the Retailer/DSP, by either party, by the arbitrators, or by a Justice of the Court of Queen's Bench of Alberta shall, in the opinion of the persons making such appointment, be possessed of such technical or other qualifications as may be

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reasonably necessary to enable him to properly adjudicate upon the dispute or difference.

18.8 Compensation of Arbitrators

Each party shall be responsible for the costs of the arbitrator appointed by it hereunder. The costs of the third arbitrator shall be divided evenly between the parties.

18.9 Application of the Arbitration Act (Alberta)

Except as herein modified, the provisions of the *Arbitration Act, R.S.A., 2000, c. A-43*, as amended from time to time, shall apply to any arbitration proceeding.

18.10 Decisions Binding

A decision of the single arbitrator or the majority of the three arbitrators named or appointed shall be final and binding upon each of the parties to the dispute or difference.

18.11 Continuity of Service

All performance required under these Terms and Conditions by the Company and the Retailer/DSP and payment therefore shall continue during the dispute resolution proceedings contemplated by this Article 18, provided that in the case of any such proceedings pertaining to amounts payable under these Terms and Conditions, any payments or reimbursements required as a result of the proceedings shall be effective as of a date to be determined in such proceedings and interest shall be paid thereon by the party required to make the payment or reimbursement on the amount thereof at the rate specified from time to time in, the Residential Tenancies Act, R.S.A. 2000, c.R.-17, but not less than 2.5% from the date so determined until paid.

ARTICLE 19 – MISCELLANEOUS

19.1 Compliance with Applicable Legal Authorities

The Company, DSP and the Retailer are subject to, and shall comply with, all existing or future applicable federal, provincial and local laws, all existing or future orders or other

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actions of governmental authorities having applicable jurisdiction. The Company will not violate, directly or indirectly, or become a party to a violation of any requirement of any applicable federal, provincial or local statute, regulation, bylaw, rule or order in order to provide Distribution Access Service to the Retailer/DSP (or a Customer of the Retailer/DSP). The Company's obligation to provide Distribution Access Service is subject to the condition that all requisite governmental and regulatory approvals for the provision of such Distribution Access Service will have been obtained and will be maintained in force during such period of Distribution Access Service.

19.2 No Assignment

Neither the Company nor the Retailer/DSP shall assign any of its rights or obligations under these Terms and Conditions or the Distribution Access Service Agreement without obtaining (a) any necessary regulatory approval(s); and (b) the prior written consent of the non-assigning party, which consent shall not be unreasonably withheld. No assignment shall relieve the assigning party of any of its obligations under these Terms and Conditions or the Distribution Access Service Agreement until such obligations have been assumed by the assignee. Any assignment in violation of this Article shall be void. However, the Company may assign any or all of its rights and obligations under these Terms and Conditions and the Distribution Access Service Agreement, without the Retailer's/DSP's consent, to any entity succeeding to all or substantially all of the assets of the Company, if the assignee agrees, in writing, to be bound by all of the Terms and Conditions hereof and if any necessary regulatory approvals are obtained.

19.3 No Waiver

The failure of either party to insist on strict performance of any provisions of these Terms and Conditions or a Distribution Access Service Agreement, or to take advantage of any of its rights hereunder, shall not be construed as a waiver of any such provisions or the relinquishment of any such right or any other right hereunder, which shall remain in full force and effect. No term or condition of these Terms and Conditions or a Distribution Access Service Agreement shall be deemed to have been waived and no breach excused unless such waiver or consent to excuse is in writing and signed by the party claimed to have waived or consented to excuse.

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19.4 Law

These Terms and Conditions and the Distribution Access Service Agreement between the Company and the Retailer/DSP shall be governed by the laws of the Province of Alberta and the federal laws of Canada applicable in the Province of Alberta, without regard to principles of conflicts of law. Any lawsuit arising in connection with these Terms and Conditions and the Distribution Access Service Agreement shall be brought in the courts of the Province of Alberta.

ARTICLE 20 – NOTICE

Unless otherwise stated herein, all notices, demands or requests required or permitted under these Terms and Conditions or a Distribution Access Service Agreement shall be in writing and shall be personally delivered or sent by courier-service or electronic transmission addressed as follows:

- (a) If to the Retailer/DSP, to the address and the addressee set out in the Distribution Access Service Agreement between the Retailer/DSP and the Company.
- (b) If to the Company to: ATCO Gas
10035 - 105 Street, Edmonton, Alberta, T5J 2V6
Attention: Manager, Pricing
Fax: (780) 420-5098

Notice received after the close of the Business Day shall be deemed received on the next Business Day.

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SCHEDULE A – DISTRIBUTION ACCESS SERVICE AGREEMENT

MEMORANDUM OF AGREEMENT made the (day) of (month), (year)

BETWEEN: **(RETAILER/DSP NAME)**

(address)

(hereinafter called the "Retailer"/"DSP")

- and -

ATCO Gas and Pipelines LTD., a body corporate with its Head Office in the City of Edmonton in the Province of Alberta ("ATCO Gas" or "Company")

WHEREAS the Retailer/DSP has requested the Company to provide the Retailer/DSP with Distribution Access Service for the purpose of serving its Gas customer(s) ("the Customer"):

The Retailer/DSP and the Company agree as follows:

1. The Retailer/DSP is solely responsible for the provision of accurate and timely Customer Information to the Company. The Retailer/DSP agrees to provide the following information by electronic form to the Company, and represents and warrants that such information is true and accurate:

(a) Retailer Identification No(s): _____.

(b) Customer Information, in a form acceptable to the Company, for each Customer of the Retailer/DSP.

Should any of the Customer Information change during the term of this Distribution Access Service Agreement, the Retailer/DSP shall advise the Company of the change, by electronic means, as soon as is reasonably practicable in the circumstance, and in any event within five (5) Business Days of the Retailer/DSP becoming aware of the change.

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2. This Distribution Access Service Agreement is subject to the Company's Terms and Conditions for Distribution Access Service ("Terms and Conditions"), as amended from time to time, which are approved by the Alberta Utilities Commission ("AUC").
3. The Retailer/DSP acknowledges that it has been offered a copy of the Company's Terms and Conditions, has reviewed and understands these Terms and Conditions and agrees to be bound by them, and any amendments thereto, in all transactions with the Company or its Customers.
4. No person, whether an employee or agent of the Company or otherwise, can agree to change, alter, vary or waive any provision of the Terms and Conditions without the express approval of the AUC.
5. The Retailer/DSP acknowledges that it has been offered a copy of the Company's Retailer Guide and is aware of the policies and business practices of the Company detailed therein.
6. This Distribution Access Service Agreement shall be effective on the date first noted herein, and thereafter shall remain in effect until terminated by either party in accordance with Article 9 or Article 11, as applicable, of the Terms and Conditions; or for the reasons set out in Article 14 of the Terms and Conditions.
7. The Retailer/DSP understands and agrees that the Distribution Access Service provided hereunder is provided solely for the Retailer's/DSP's use at the locations and for the Customers identified to the Company in accordance with paragraph 1 hereof. The Retailer/DSP shall not use the Distribution Access Service provided by the Company for any other purpose.
8. If the Retailer/DSP, at any time, becomes aware that any Customer is using the service(s) provided by the Retailer/DSP or the Company in a manner which is inconsistent with the Terms and Conditions, which could potentially create safety, health or environment concerns or damage the Company's Distribution System or Gas Pipeline System, the Retailer/DSP shall immediately notify Company of such circumstances.

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9. In providing service to its Customer, the Retailer/DSP shall not, in any way, damage or interfere with or otherwise disturb, alter or tamper with the Gas Pipeline System of the Company. The Retailer/DSP shall notify the Company immediately of any problem or defect relating to Company's Gas Pipeline System, which is discovered by or brought to the attention of the Retailer/DSP.
10. The Retailer/DSP agrees to pay all rates, charges, invoices or fees levied or billed to it by the Company in accordance with Article 7 of the Terms and Conditions.
11. The Retailer/DSP acknowledges, understands and agrees that the Company will not perform any billing or collection activities on its behalf. The Retailer/DSP agrees to pay all amounts due and owing to the Company in accordance with Article 7 of the Terms and Conditions, regardless of any billing or collection disputes the Retailer/DSP may have with its Customer(s).
12.
 - (a) The Retailer agrees to comply with the Company's Prudential Requirements established pursuant to Article 11 of the Terms and Conditions for purposes of enabling the Company to assess the Retailer's credit risk and required security.
 - (b) The Company shall be entitled to access the financial security provided by the Retailer/DSP in any event of default including late payment or default on any invoices or bills of the Company, in accordance with Articles 7, 11 and 14 of the Terms and Conditions.
13. This Distribution Access Service Agreement is subject to all applicable legislation, including the *Gas Utilities Act, R.S.A. 2000, c.G-5*, as amended from time to time, and the Regulations made thereunder, and all applicable orders, rulings, regulations and decisions of the AUC or any other regulatory authority having jurisdiction over the Company or the matters addressed herein.
14. This Distribution Access Service Agreement shall enure to the benefit of and be binding and enforceable by the parties hereto and their respective executors, administrators, successors and, where permitted, assigns.

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15. If any provision of this Distribution Access Service Agreement, or the application thereof, is to any extent held invalid or unenforceable, the remainder of this Distribution Access Service Agreement and the application thereof, other than those provisions which have been held invalid or unenforceable, shall not be affected and shall continue in full force and effect and shall be enforceable to the fullest extent permitted by law or in equity.
16. Neither Party may disclose any Confidential Information obtained pursuant to this Distribution Access Service Agreement to any third Party, without the express prior written consent of the other Party. As used herein, the term "Confidential Information" shall include all business, financial, and commercial information pertaining to the Parties, Customers of either Party, suppliers for either Party, personnel of either Party, any trade secrets and other information of a similar nature, whether written or otherwise that is marked "proprietary" or "confidential" with the appropriate owner's name.

Notwithstanding the preceding, a receiving Party may disclose Confidential Information to any governmental, judicial or regulatory authority requiring such Confidential Information pursuant to any applicable law, regulation, ruling or order, providing that:

- (a) such Confidential Information is submitted under the applicable provision, if any, for confidential treatment by such governmental, judicial or regulatory authority; and
 - (b) prior to such disclosure, the other Party is given prompt notice of the disclosure requirement so that it may take whatever action it deems appropriate, including intervention in any proceeding and the seeking of any injunction to prohibit such disclosure.
17. All notices required hereunder shall be in writing and may be given personally, by facsimile or prepaid registered mail addressed to the party for which the notice is intended to its address designated hereunder or to such other address as may be substituted therefore from time to time.

The Retailer's address for notice is:

Retailer Name

The Corporation's address for notice is:

ATCO Gas and Pipelines Ltd

Effective July 1, 2010

Retailer Address 10035 – 105 Street
P.O. Box 2426
Edmonton, Alberta, T5J 2V6

Attention: Attention: Customer Care Services
Facsimile: Facsimile: (780) 420-3839

IN WITNESS WHEREOF the Parties have executed this Agreement as of the day first above mentioned.

[RETAILER/DSP NAME]

ATCO Gas and Pipelines LTD.

Per: _____
Name: _____
Title: _____

Per: _____
Name: _____
Title: _____

Effective July 1, 2010

SCHEDULE B – DISCONNECT CUSTOMER SITE

The Company's policy (as approved in these Terms and Conditions) with respect to disconnecting Customers is set out below. The same policies shall apply to all Retailers/DSP.

1. Where a Retailer/DSP requests the Company to disconnect a Customer for non-payment, the Retailer/DSP shall provide to the Company updated Customer Information, the proof of payment amount the Retailer/DSP will accept in the event the Customer provides ability of payment, the date the Customer was provided 10 days written notice and a direct phone number to the Retailer's/DSP's collection department for circumstances when the Customer is required to contact the Retailer/DSP immediately to resolve payment issues. The Company will not assume any billing or collection obligations or responsibilities for or on behalf of the Retailer/DSP.
2. A Retailer/DSP that submits a disconnect for non-payment, must submit a disconnect release to the Company within 24 hours of receiving the Customer payment.
3. Disconnection by Company or at request of Retailer/DSP (including Cut Off For Non-Payment "CONP" activity) will commence for residential and commercial residential property sites on April 15th of each year. Between April 15th and November 30th when the overnight temperature is forecast to drop below zero (0) degrees Celsius in the 24 hour period immediately following the proposed disconnect within the Company service area the Company will not disconnect a residential or commercial residential property. Residential and commercial residential, including multi-family, property sites will not be disconnected during the winter season defined as December 1st to April 14th, unless there is written notification to the Retailer/DSP from the property owner requesting the disconnection. The Retailer/DSP will forward a copy of the property owner's written request to the Company before the Company will schedule field work.

Effective July 1, 2010

4. CONP activity will be scheduled during regular business hours on weekdays of Monday, Tuesday, Wednesday and Thursday. No CONP activity will be scheduled on Friday, Saturday and Sunday or any statutory holiday or any day prior to a statutory holiday observed in the service area.
5. The Company will not disconnect a Customer if the Retailer/DSP has not provided the Customer with a written notice at least 10 Business Days in advance of the proposed disconnect. The Company must be provided with a copy of such notice upon request.
6. The Company will not disconnect if the Customer produces a receipt showing it has paid the most current bill or the amount specified in part 1 of this Schedule B.
7. The Company will provide to a previous Retailer of Record at the Site the right to request a disconnect for a period of 8 months since that Retailer/DSP last provided Distribution Access Service at the Site. When this occurs, the Company will comply with a request to energize from the current or new Retailer only after the Retailer requesting the CONP has issued a release. See Terms and Conditions for Distribution Access Service Article 10.2(b).
8. The Company may, upon visiting the Site, delay the disconnection until the Company is satisfied that all conditions for disconnection are met. Reasons for delay include, but are not limited to:
 - (a) Customer Information does not match Customer Information provided by the Retailer/DSP
 - (b) Customer has proof of payment in hand at the Site and is prepared to meet payment conditions set by the Retailer/DSP
 - (c) Immediate danger may exist to the occupants or the companies' representatives.
 - (d) Disconnecting the service will adversely affect other Customers who are not to have their service disconnected.
 - (e) Where meters are located inside or on another Customer's property and access to the meter cannot be obtained. These situations will require additional distribution requirements including construction arrangements to disconnect elsewhere on the service line.

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SCHEDULE C – NON-DISCRETIONARY CHARGES

1.0 APPLICABILITY

Applicable to every Retailer/DSP participating in Distribution Access Service within the Company's service area.

The service charges outlined herein are also outlined in the Company's Terms and Conditions for Distribution Service Connections. This is done to ensure the Customer (or Retailer/DSP) is aware of the charges that may apply whether they are reviewing this set of Terms and Conditions or the other. For greater clarity, the listing of these charges in both sets of T & C's does not entitle the Company to recover charges under both sets of T & C's.

2.0 SCHEDULE OF CHARGES

All charges and provisions of the Customer's applicable price schedule shall apply in addition to the following charges for the service being provided.

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**SCHEDULE C
 NON DISCRETIONARY CHARGES
 Effective January 1, 2010**

1. **SERVICE LINES:** Applicable to all services except those eligible for grants under the Rural Gas Act.

1.1 Pipe Installation:

ATCO Gas (North)		
Service Line Diameter	Summer	Winter
15.9 mm or 26 mm (up to and including 15 metres)	\$580*	\$830*
Linear charge for length over 15 metres	\$47/metre	\$64/metre
42.2 mm or 60.3 mm (up to 15 metres)	\$780*	\$1,130*
Linear charge for length over 15 metres	\$66/metre	\$89/metre
Greater than 60 mm	Contract Price	Contract Price
Credit for provision of service line trench in 4-party installation	\$40	\$200

ATCO Gas (South)		
Service Line Diameter	Summer	Winter
15.9 mm or 26 mm (up to and including 15 metres)	\$430*	\$620*
Linear charge for length over 15 metres	\$31/metre	\$44/metre
42.2 mm or 60.3 mm (up to 15 metres)	\$780*	\$1,130*
Linear charge for length over 15 metres	\$66/metre	\$89/metre
Greater than 60 mm	Contract Price	Contract Price
Credit for provision of service line trench in 4-party installation	\$40	\$200

Notes:

1. Winter and Summer conditions are determined by the ATCO Gas representative on site. Typically winter conditions are 150mm or more of frozen ground conditions and / or 300mm or more of snow cover. If construction occurs within the winter construction season as determined by ATCO Gas, winter construction rates will apply.
2. The customer will be charged for the Primary Service line from the property line to the Gas Meter location when the main is located outside the customer's property.
3. The customer will be charged for the Primary Service line from the edge of easement to the Gas Meter location when the main is located in an easement within the customer's property.

*The fixed charge will be phased in over three years as per the following table:

	Service Size	Summer			Winter		
		2010	2011	2012	2010	2011	2012
South	15mm or 26mm	\$430	\$520	\$620	\$620	\$710	\$810
	42mm or 60mm	\$780	\$960	\$1140	\$1130	\$1310	\$1490
North	15mm or 26mm	\$580	\$720	\$860	\$830	\$970	\$1110
	42mm or 60mm	\$780	\$960	\$1140	\$1130	\$1310	\$1490

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1.2 Mobilization Charge: A mobilization charge of \$150.00 will be levied for each additional site visit required when a site with an inspector confirmed site ready date does not meet ATCO Gas requirements for service line installations upon arrival of the service installation crew.

1.3 Pavement and Concrete Breaks: Contract Price. Applicant responsible for settlement and permanent repair.

1.4 Crossings: Including highway, railroad, road, pipeline, canal - Contract Price

1.5 Compaction: Contract Price

1.6 Shallow Utility Crossings: Contract Price

1.7 Waste Removal: Contract Price

2. COMPANY RURAL INVESTMENT: “three times net revenue”

3. REINSTATEMENT CHARGE:

a. Residential (not before 8am of the next business day) - \$90.00

b. Residential (before 8am of the next business day) - \$205.00

c. Non-Residential (not before 8am of the next business day) - Contract Price (minimum \$90.00)

d. Non-Residential- (before 8am of the next business day) - Contract Price (minimum \$205.00)

4. METER RELOCATIONS

3.1 Single Family Dwelling: Inside to outside – No direct ATCO Gas charges if viewed as required by ATCO Gas. Customer may be responsible for permitting fees and site clean up. All other moves at Contract Price.

3.2 Other: Contract Price

5. INSTALLATION OF AUTOMATIC METER READING OR REMOTE METER READING DEVICE - \$170.00

6. ALTERATIONS, RELOCATIONS AND REPLACEMENT - Contract Price

7. SERVICE CALL FOR PROBLEMS CAUSED BY CUSTOMERS - Contract Price including estimated cost of lost gas.

8. TEMPORARY SERVICE – Contract Price

9. SPECIAL METER READ FEE: \$50.00

10. METER HANDLING FEE:

a. Residential - \$110.00

b. Non-Residential - Contract Price (minimum \$110.00)

c. Customer Usage Information Fee will apply as required.

11. DISHONoured CHEQUES: \$30.00

12. CUSTOMER USAGE INFORMATION: Contract Price

13. PROVISION OF CUSTOMER INFORMATION TO THE COMPANY: Contract Price

14. BILLING ERROR: Contract Price

NOTE: All charges in Schedule C are subject to GST except the “Dishonored Cheque” charge.

Effective July 1, 2010

SCHEDULE D – IMBALANCE PURCHASE/SALE CHARGES

1.0 Imbalance Window Percentage

The daily Imbalance Window percentage applicable to each Retailer/DSP Account is $\pm 5\%$.

2.0 Minimum Energy Imbalance Window

The daily minimum energy Imbalance Window applicable to each Retailer/DSP Account for each Day is:

- (a) When the daily Backcast is less than or equal to 5,000 GJ the minimum energy Daily Imbalance Window quantity shall be ± 500 GJ;
- (b) When the daily Backcast is greater than 5,000 GJ the minimum energy Daily Imbalance Window quantity shall be $\pm 1,000$ GJ.

3.0 Imbalance Purchase/Sale Price

The Imbalance Purchase/Sale price applicable to each Retailer/DSP Account is:

- (a) For Imbalance Purchase, the price used by the Company will be the lowest Same Day Market or Yesterday Market trade price that occurs on the NGX for the Gas Day as reported by the NGX as the “AECO “C” and N.I.T Same Day Price” and “NGX Alberta Yesterday Price” obtained from the “Historical NGX Indices” webpage <http://www.ngx.com/protectedmembers/indices.html>
- (b) For Imbalance Sale, the price used by the Company will be the highest Same Day Market or Yesterday Market trade price that occurs on the NGX for the Gas Day as reported by the NGX as the “AECO “C” and N.I.T Same Day Price” and “NGX Alberta Yesterday Price” obtained from the “Historical NGX Indices” webpage <http://www.ngx.com/protectedmembers/indices.html>

**APPENDIX 5 – DISTRIBUTION SERVICE CONNECTIONS TERMS AND
CONDITIONS**

**ATCO GAS
TERMS AND CONDITIONS
FOR
DISTRIBUTION SERVICE CONNECTIONS**

Effective: July 1, 2010

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ARTICLE 1 – PREAMBLE

In accordance with the provisions of the Gas Utilities Act (“GUA”) and the Regulations made there under (“Regulations”), ATCO Gas an operating division of ATCO Gas & Pipelines Ltd. (“ATCO Gas”) in its role as a pipe owner will carry out the functions necessary to furnish natural gas facilities to Customers in its service area to enable Customers to purchase natural gas for that person's own use from a Retailer or Default Supply Provider (“DSP”). These Terms and Conditions are intended to govern the relationship between ATCO Gas and Customer(s) that require a Service Connection to the Company's Gas Pipeline System. These Terms and Conditions will also govern the relationship between ATCO Gas and Retailer(s), DSP's or any other person whom the Customer has assigned to act on its behalf in its dealings with ATCO Gas, regarding the provision of Gas Distribution Service on its Gas Pipeline System.

These Terms and Conditions serve as a companion to the Terms and Conditions for Distribution Access Service which are intended to enable Retailers/DSP's to acquire access to the Company's Gas Pipeline System for the purposes of allowing them to sell natural gas directly to Customers. A Customer may also act as a Self-Retailer by carrying out Retailer functions to obtain Gas Services solely for its own use.

The service provided by ATCO Gas hereunder is regulated by the Alberta Utilities Commission (“AUC”) and parties having any inquiries or complaints regarding these Terms and Conditions may direct such inquiries or complaints directly to ATCO Gas or to the AUC. These Terms and Conditions have been approved by the AUC.

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ARTICLE 2 – DEFINITIONS AND INTERPRETATION

2.1 Definitions

The following words and phrases, whenever used in these Terms and Conditions, the Company's Natural Gas Rate Schedules or an application, contract or agreement for service, shall have the meanings set forth below:

"*Act*" means the *Gas Utilities Act*, R.S.A. 2000, c.G-5, as amended from time to time;

"*Agent*" means a person who performs functions on behalf of a Self-Retailer, Retailer, or DSP including, but not limited to, retailer transactions with the Company;

"*AUC*" means the Alberta Utilities Commission established under the *Alberta Utilities Commission Act*, S.A 2007. c. A-37.2, as amended from time to time;

"*Business Day*" is any day other than Saturday, Sunday or a holiday as defined in the *Interpretation Act*, R.S.A. 2000, c.1-8; as amended from time to time;

"*Company*" means ATCO Gas, an operating division of ATCO Gas and Pipelines Ltd. or its successor;

"*Connected Load*" means the sum of the capacities or ratings of the Energy consuming apparatus connected to a supplying system or any part of such system;

"*Custom Service*" means Gas Distribution Service that is not Standard Service;

"*Customer*" means a person, firm, partnership, corporation, organization or association (including, without limitation, individual members of any unincorporated entity) who consumes Gas in end-use at its location and is connected to the Company Gas Pipeline System;

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"Customer Contribution" means the amount that the Customer must pay to the Company to install the Specific Facilities and/or Gas Pipeline Systems necessary to provide a Service Connection to the Customer;

"Customer Information" means the data specified in the Natural Gas Settlement System Code and includes without limitation Site Customer name, Site Customer telephone number, Site Customer mailing address, Site Contact name, Site Contact phone number and other safety related information required to provide safe Gas Distribution Service to Customers;

"Customer Usage Information" means information regarding the historical natural gas consumption as specified in Article 4.8.3 for Site Customers or AUC Rule 10 for Retailers/DSP

"Default Supply Provider" or "DSP" means a Gas Distributor or a person authorized by a Gas Distributor who provides Gas Services to Customers under rates, tolls or charges fixed by the AUC and terms or conditions fixed by the AUC;

"Distribution Access Service" means the service required to transport Gas to Customer(s) by means of a Gas distribution system. This service enables a Customer to obtain Gas supply service through Self-Retailing, from a Retailer or the DSP and is governed by the Terms and Conditions for Distribution Access Service;

"Energy" means natural gas energy (expressed in joules or sub-multiples or multiples thereof);

"Force Majeure" means circumstances not reasonably within the control of the Company, including acts of God, strikes, lockouts or other industrial disturbances, acts of the public enemy, wars, blockades, insurrections, riots, pandemics, epidemics, landslides, lightning, earthquakes, fires, storms, floods, high water, washouts, inclement weather, orders or acts of civil or military authorities, civil disturbances, explosions, breakdown or accident to equipment, mechanical breakdowns, temporary failures of gas

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supply, the intervention of federal, provincial, state or local government or from any of their agencies or AUC, excluding decisions and/or orders made by the AUC in the normal course of it exercising its authority to establish the revenue requirement of the parties to this agreement, the order or direction of any court, and any other cause, whether of the kind herein enumerated or otherwise;

"Gas" means all natural gas both before and after it has been subjected to any treatment or process by absorption, purification, scrubbing or otherwise, and includes all fluid hydrocarbons;

"Gas Distributor" means the owner, operator, manager or lessee of a gas distribution system as defined in the *Act*;

"Gas Distribution Service" means the service required to transport Gas to Customer(s) by means of a Gas Pipeline System and includes any services the Gas Distributor is required to provide by the AUC or is required to provide under the *Act* or Regulations made thereunder;

"Gas Distribution Tariff" means the rates, tolls or charges fixed by the AUC and the terms and conditions fixed by the AUC, for Gas Distribution Service;

"Gas Pipeline System" means all those facilities owned or used by Company in the receipt, delivery, transportation, measurement and testing of Gas, (including, without limitation, transmission and distribution lines, regulators, meters, equipment and machinery);

"Gas Services" as defined in the *Act* means:

- (i) the Gas that is provided and delivered, and
- (ii) the services associated with the provision and delivery of the Gas, including:
 - (A) arranging for the exchange or purchase of the Gas,

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- (B) making financial arrangements to manage the financial risk associated with the price of Gas,
- (C) arranging for Gas Distribution Service,
- (D) arranging for delivery of Gas to the gas distributor's specified Point(s) of Receipt,
- (E) storage,
- (F) billing, collection and responding to customer billing inquiries,
- (G) maintaining information systems, and
- (H) any other services specified by the Minister by order as Gas Services;

"Load" means the amount of natural Gas delivered or required to be delivered at any specific point or points in the Gas Pipeline System;

"Lots" means two or more contiguous lots or parcels of land;

"Multiple Dwelling" means a residential dwelling unit in a building containing more than one residential dwelling unit, all of which share common services or facilities;

"Municipality" means a city, town, village, summer village, municipal district or specialized municipality, a town under the *Park Towns Act, R.S.A. 2000, c.P-2*, or a municipality formed by special Act, and includes a Metis Settlement;

"Natural Gas Service Agreement" means an agreement for the provision of a Service Connection pursuant to these Terms and Conditions, made between the Company and a Customer;

"Point of Delivery", for service by the Company to the Customer, means, unless otherwise specified in a Natural Gas Service Agreement, the outlet side of a meter;

"R3 Regulation" means the *Roles, Relationships and Responsibilities Regulation, A.R. 186/2003*, as amended from time to time;

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"Rate Schedule" means a natural gas rate schedule prepared by the Company and approved by the AUC, as amended from time to time;

"Retailer" means a person who sells or provides retail Gas Services directly to Customers and who is entitled to enroll Customers for Distribution Access Service under the Company's Terms and Conditions for Distribution Access Service and includes Self-Retailers;

"Retailer Guide" means the guide prepared by the Company which describes the business processes for the transactions between the Company and the Retailer/DSP in relation to the provision of service under the Terms and Conditions for Distribution Access Service;

"Self-Retailer" means a person carrying out Retailer functions to obtain Gas solely for its own use;

"Service Connection (Service Line or Extension of Service)" means the Specific Facilities required to physically connect the Customer's facilities to the Company's Gas Pipeline System to permit the Customer to obtain Gas Distribution Service;

"Service Line" means the section of the Gas Pipeline System from the boundary of the Customer's property which abuts the street or right of way in which the Company's distribution main is or will be situated to the meter on the Customer's premise;

"Single Family Dwelling" means a private residence provided with sleeping and cooking facilities intended for domestic use and in which the occupants live as a single housekeeping unit that is not part of a Multiple Dwelling;

"Site" means a unique end-use Point of Delivery, being the finest level at which settlement recognizes Retailer and DSP assignments, and receives consumption data;

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"*Site ID*" means a unique identification number assigned by the Company for each unique end-use Point of Delivery;

"*Specific Facilities*" means those facilities installed by the Company for the benefit of a particular Customer/Retailer/DSP which are connected to the Gas Pipeline System and are required to transport Gas.

"*Standard Delivery Pressure*" is 1.72 kPa

"*Standard Service*" is Gas Distribution Service whereby:

- (i) the Gas is delivered to the Customer at Standard Delivery Pressure, or at the Company's sole discretion, the prevailing operating pressure in the Gas Pipeline System at the Customer Site but with no guarantee of pressure greater than Standard Delivery Pressure, and,
- (ii) no additional Specific Facilities are required beyond those that would otherwise be required to accommodate the Customer Load at Standard Delivery Pressure.

2.2 Conflicts

- (a) If there is any conflict between a provision expressly set out in an Order of the AUC and these Terms and Conditions, the Order of the AUC shall govern.
- (b) If there is any conflict between a provision expressly set out in these Terms and Conditions, as may be amended from time to time, and a Natural Gas Service Agreement, the express provision of these Terms and Conditions shall govern, as of their effective date.

2.3 Headings

The division of these Terms and Conditions into Articles, subsections and other subdivisions and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of these Terms and Conditions.

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2.4 Schedules and Appendices

The following schedules and appendices are attached to and form part of these Terms and Conditions:

- Schedule C – Non-Discretionary Charges
- Schedule D – Custom Service Letter Agreement

ARTICLE 3 – GENERAL PROVISIONS

3.1 AUC Approval

These Terms and Conditions have been approved by the AUC. The Company may amend these Terms and Conditions by filing a notice of amendment with the AUC. Included in the notice of amendment to the AUC shall be notification of which Customer groups are affected by the amendment and an explanation of how affected Customers will be notified of the amendment. Any amendment to the Terms and Conditions will take effect 60 days after such notice is filed, unless the AUC otherwise directs.

3.2 Gas Distribution Tariff

The Gas Distribution Tariff is available for public inspection during normal business hours at the business offices of the Company and at the offices of the AUC and can be accessed at the Company's website at: www.atcogas.com. These Terms and Conditions form part of the Gas Distribution Tariff.

3.3 Effective Date

These Terms and Conditions come into force as per the Effective Date shown on the cover page. Whenever the Company files a notice of amendment to these Terms and Conditions, or when the AUC approves an amendment to these Terms and Conditions, revisions will be issued, with the effective date of the amendments indicated thereon.

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3.4 Application of Terms and Conditions

- (a) These Terms and Conditions, as amended from time to time, apply to the Company and to every Customer to which the Company provides a Service Connection. These Terms and Conditions also govern the relationship between the Company and Retailer/DSP, Agent or any other person whom the Customer has assigned to act on its behalf in its dealings with the Company regarding the provision of Gas Services on its Gas Pipeline System.
- (b) The application for a Service Connection, the entering into a Natural Gas Service Agreement, the use by the Customer of a Service Connection to obtain Gas Services or the payment by the Customer of an account rendered by the Company in relation to a Service Connection shall constitute acceptance by the Customer of these Terms and Conditions whether or not the Customer has signed an application or contract for service.
- (c) No agreement can provide for the waiver or alteration of any part of these Terms and Conditions unless such agreement is first filed with and approved by the AUC.

3.5 Ownership of Facilities

- (a) The Company remains the owner of all segments of the Gas Pipeline System and Specific Facilities necessary to provide a Service Connection to the Customer, unless an agreement between the Company and Customer specifically provides otherwise.
- (b) Payment made by Customers for costs incurred by the Company in installing any segment of the Gas Pipeline System and Specific Facilities does not entitle Customers to ownership of any such segment of the Gas Pipeline System and

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Specific Facilities, unless an agreement between the Company and the Customer specifically provides otherwise.

3.6 Fees and Other Charges

The Company will provide all standard service and custom service hereunder pursuant to the Gas Distribution Tariff. All additional, supplementary or extra non-discretionary services provided by the Company to a Customer will be charged a separate rate or fee, such as those included, without limitation, in Schedule C and D herein. Payment for these services shall be in accordance with the provisions of these Terms and Conditions.

ARTICLE 4 – ESTABLISHMENT OF SERVICE

4.1 Application for Service Connection

- (a) To enable the Company to provide the requested Gas Distribution Service, applicants for service shall supply information regarding the location of the premises to be served; the Customer's Connected Load and preferred supply conditions; the manner in which the Service Connection will be utilized; prepayment; and, any other information that may be required by the Company.

- (b) Upon receipt of the required information, the Company will advise the applicant of the type and character of the Service Connection it will furnish to the Customer, and any special conditions that must be satisfied.

4.2 Method of Application

4.2.1 Form and Acceptance of Application

- (a) All Customers must be of legal age to contract for service with the Company. The Company reserves the right to verify the identity of the

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Customer and the accuracy of the information provided and to require the Customer to execute an application in the form provided by the Company. If a Customer is not of legal age, a person of legal age may be required to accept responsibility for the Gas Distribution Service on the Customer's behalf.

- (b) For commercial and industrial Customers, written acceptance specifying the Customer has agreed to these Terms and Conditions must be received by the Company before construction of the Service Connection will proceed.

4.2.2 Application by Retailer/DSP or Other Person

A Retailer/DSP or any other person acting as an Agent of a Customer may apply for a Service Connection on behalf of the Customer. The Retailer/DSP or Agent must provide the Company, in a form acceptable to the Company, verifiable authorization from the Customer to make the application.

4.3 Payment for Service Connection

- (a) Customers applying for Service Connections are required to prepay the charge / estimate.
- (b) The Customer will be required to pay the complete cost upon completion of the work, including where prepayment was based on an estimate.
- (c) Customers owing money to the Company will be required to make full payment of all outstanding balances plus meet the conditions of (a) and (b) above.

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4.4 Rejection of Application

The Company may, without limitation, reject any applicant's request for a Service Connection:

- (a) when the Customer does not have currently in force all permits or other authorizations that may be required for the installation of the Service Connection as defined in section 4.6; or
- (b) when the Company determines that a previous account held by the Customer is in arrears with the Company; or
- (c) when the Customer fails to provide a payment as specified in Article 4.3; or
- (d) when the Company determines that the form of the Natural Gas Service Agreement is not appropriate for the Service Connection due to its unique nature and the Customer refuses to enter into an alternate form of agreement acceptable to the Company; or
- (e) when any representation made by the applicant or the Customer to the Company for the purpose of obtaining a Service Connection is, in the Company's opinion, fraudulent, untruthful or misleading; or
- (f) when the Customer has not, when requested by the Company to do so, provided a signed written application for a Service Connection or a signed Natural Gas Service Agreement; or
- (g) when the proposed Loads, in the Company's opinion, have unusual characteristics that might adversely affect the quality of service supplied to other Customers, the public safety, or the safety of the Company's personnel or the Company's Gas Pipeline System or equipment; or

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- (h) for any other reason rejection of the application is deemed necessary by the Company.

4.5 Natural Gas Service Agreement

- (a) A Customer may be required by the Company to sign a Natural Gas Service Agreement in respect of a Service Connection. The Natural Gas Service Agreement shall be signed by the Customer and not by its Agent.
- (b) In the absence of a signed Natural Gas Service Agreement, the supplying of a Service Connection by the Company and the acceptance thereof by the Customer shall be deemed to constitute an agreement by and between the Company and the Customer for delivery, receipt and payment for Gas Distribution Service under the Company's applicable Rate Schedules and Terms and Conditions.
- (c) If any provision of the Customer's Natural Gas Service Agreement, or the application thereof, is to any extent held invalid or unenforceable, the remainder of its Natural Gas Service Agreement and the application thereof, other than those provisions which have been held invalid or unenforceable, shall not be affected and shall continue in full force and effect and shall be enforceable to the fullest extent permitted by law or in equity.
- (d) A contract for service is not assignable by the Customer without the prior written consent of the Company, which consent shall not be unreasonably or arbitrarily withheld.

4.6 Approvals

The Customer for a new, altered or relocated Service Connection shall be responsible for obtaining all permits, certificates, licenses, inspections, reports, and other

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authorizations necessary for the installation and operation of the Service Connection. The Company shall not be required to commence or continue installation or operation of a Service Connection unless and until the Customer has complied with the requirements of all permits, certificates, licenses, inspections, reports and other authorizations, and all right-of-way agreements, and all Company requirements applicable to the installation and operation of the Service Connection.

4.7 Temporary Service

- (a) Where the Company reasonably believes that a requested service will be temporary, it may require the Customer requesting the service to pay the Company in advance of a Service Connection, the estimated cost of Specific Facilities plus the estimated cost of installation and removal of Specific Facilities necessary for the desired service, less the value of the salvaged material.
- (b) Where the duration of service is to be less than one month, the Customer may be required to advance a sum of money equal to the estimated bill for service.

4.8 Information and Requirements for Service

4.8.1 Distribution Service Connections

Upon request, the Company shall provide to the Customer, information on the method and manner of making Service Connections. Such information may include a description of the Service Connection available, the location of entrance facilities and metering equipment, and Customer and Company responsibilities for installation of Specific Facilities including Customer responsibility for Retailer/DSP enrollment prior to meter installation.

4.8.2 Distribution Access Service

For Customers requesting information on Distribution Access Service, the Company will:

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- (a) make available notification and informational materials about competition and consumer choices;
- (b) make available the Company's Terms and Conditions for Distribution Access Service;
- (c) direct Customers to an external source where they may obtain information about customer choice. The Company is under no obligation to assure the accuracy of this information.

4.8.3 *Customer Usage Information*

- (a) The Company shall provide Customer Usage Information to a Customer upon request in relation to:
 - (1) the 12-month period preceding the date of the request, or
 - (2) for any shorter period for which the Company has collected that information for the requesting customer.
- (b) An Agent or consultant, acting on behalf of a Customer, may request Customer Usage Information by obtaining and submitting to the Company the authorization from the Customer in a form as set out in the Retailer Guide.
- (c) The Customer shall submit requests for Customer Usage Information by referencing the Site ID. All such requests shall be in writing and may be delivered via electronic mail (e-mail), facsimile (fax) or by standard mail.
- (d) The Company will normally process requests within five (5) Business Days of receiving notification from the Customer. If the Company determines that it cannot process the request within five (5) Business

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Days, the Company shall notify the Customer of the approximate delivery date.

- (e) The information referred to in section (a) above will be provided by the Company at no cost for requests made once per year per account. The Company reserves the right to assess a charge for additional Customer Usage Information requests as set forth in Schedule C hereof.

4.9 Application of Rate Schedules

- (a) The Company will make Customers aware of the various Rate Schedules under which the Company provides service to different Customer rate classes. The Company will endeavor to apply the applicable Rate Schedule which is most favorable to the Customer, providing the Rate Schedule applies to the service requested by the Customer, the Customer is eligible for the requested service, and that application of the requested Rate Schedule does not have an adverse impact on other Customers of the Company. The Company shall not be required to refund the difference in charges under different Rate Schedules for any past period during which the Customer did not request service under an alternate Rate Schedule that may have been available to such Customer.
- (b) Various riders and options are also applicable to the Gas Distribution Service as specified in the Rate Schedule approved from time to time by the AUC.
- (c) Subject to the above, where the Customer's service requirements change so that some other Rate Schedule(s), riders and options may apply to the service, upon the receipt of a written request from the Customer, the Company will advise the Customer of its eligibility for service under the alternate Rate Schedule, and the Company will change the Customer's billing accordingly.
- (d) In each circumstance, the Company may perform an investment contribution calculation to determine whether any adjustments are required to the Customer's

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Contribution, as specified in Article 7, to recognize the different levels of company investment which apply to each Rate Schedule.

- (e) In addition to payments for Gas Distribution Service, the Customer (or Retailer/DSP) is required to pay the Company the amount of any tax or assessment levied by any tax authority on Gas Distribution Service provided to the Customer.
- (f) Should a dispute arise between the Company and a Customer with regards to the Customer's eligibility to switch rates, the Company will normally bring the dispute before the AUC for resolution. This does not preclude the Customer from bringing the same dispute before the AUC. Switching will not be allowed before the AUC renders a decision.

ARTICLE 5 – SERVICE REQUIREMENTS AND FACILITIES

After the Customer has complied with the Company's application and payment requirements and has been accepted for Gas Distribution Service by the Company, has obtained all required permits and/or inspections indicating that the Customer's facilities comply with local construction, safety standards or regulations, and the Company has received Retailer/DSP enrollment, the Company shall schedule that Site for Service Connection.

5.1 Customer Provided Facilities and Requirements

5.1.1 Protection of the Company's Specific Facilities and Gas Pipeline Systems

The Customer shall furnish and maintain, at no cost to the Company, the necessary space, housing, fencing, barriers, and foundations for the protection of the Specific Facilities and Gas Pipeline Systems to be installed upon the Customer's premises which may or may not include a dedicated meter room and an active telecommunications line for measurement equipment. If the Customer refuses, the Company may at its option furnish and maintain, and charge the Customer for furnishing and maintaining, the necessary protection. Such space,

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housing, fencing, barriers and foundations shall be in conformity with all applicable laws and regulations and shall be subject to the Company's specifications and approval.

5.1.2 Compliance with Requirements and Use of Service Connection

The Customer will ensure that its facilities comply with the applicable requirements and with any technical guidelines that may be issued from time to time by the Company or the applicable authority having jurisdiction.

5.1.3 Extensions

A Customer shall not, without the prior written consent of the Company, sell or otherwise permit any other person to use such Gas Distribution Service nor shall a Customer extend or permit the extension of facilities connected to the Company's distribution system beyond property owned or occupied by that Customer for any Point of Delivery.

ARTICLE 6 – RIGHTS OF WAY AND ACCESS TO GAS PIPELINE SYSTEM

6.1 Easements

At the request of the Company, the Customer shall grant, or cause to be granted, to the Company, without cost to the Company, such easements or rights-of-way over, upon or under the property owned or controlled by the Customer as the Company reasonably requires for the construction, installation, maintenance, repair, and operation of the Gas Pipeline System required for a Service Connection to the Customer and the performance of all other obligations required to be performed by the Company hereunder.

6.2 Right of Entry

The Company's employees, agents and other representatives shall have the right to enter a Customer's property at all reasonable times for the purpose of installing, maintaining, replacing, testing, monitoring, reading or removing the Company's Gas

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Pipeline System and for any other purpose incidental to the provision of a Service Connection and the Customer shall not prevent or hinder the Company's entry. In the event that any of the Company's Gas Pipeline System is situated within a Customer's premises, the Company may require that Customer to provide to it a key for the purpose of gaining access to such Gas Pipeline System. The Company will endeavor to provide reasonable notice to the Customer when the Company requires entry to the Customer's property for planned maintenance or repairs to the Company's Facilities.

6.3 Vegetation Management

The Customer shall permit the Company to manage vegetation on the property owned or controlled by the Customer to maintain proper clearances, reduce the risk of contact with, and allow access to the Company's Gas Pipeline System. The Company shall make reasonable efforts to notify the Customer before such work is performed.

6.4 Interference with Company's Gas Pipeline System

The Customer shall not install or allow to be installed on property owned or controlled by the Customer any temporary or permanent structures that could interfere with the proper and safe operation of the Company's Gas Pipeline System or result in non-compliance with applicable statutes, regulations, standards and codes. The Company shall not be liable for any damage to any structure or improvement erected, installed or placed in contravention of these Terms and Conditions resulting from the maintenance of such gas line or service line.

ARTICLE 7 – EXTENSION OF SERVICE

The Company shall, in accordance with these Terms and Conditions, extend its Gas Pipeline System for the purpose of providing permanent Gas Distribution Service to an applicant who qualifies for Gas Distribution Service hereunder if the following conditions, or such of them as are applicable, are satisfied.

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- (a) The applicant shall pay to the Company the costs set out in Schedule C (the Customer Contribution) for the service line from the boundary of the applicant's property which abuts the street or right of way in which the Company's distribution main is or will be situated to the meter on the applicant's premises ("service line").
- (b) Subject to clause (a) hereof, if the applicant's premises are situated in a Municipality which has a subsisting franchise agreement with the Company, the Company shall, without charges other than those payable under the applicable Rate Schedule, extend its Gas Pipeline System for the purpose of providing permanent Gas Distribution Service to the applicant provided that:
- i. the Municipality has, at its expense, extended or will concurrently extend its water and sewer services to serve the premises of such applicant, and
 - ii. the Gas Distribution Service being requested by the applicant is Standard Service as defined by these Terms and Conditions.
- (c) In any case where clause (b) (i) hereof does not apply and clause (b) (ii) does apply, but subject always to clause (a) hereof, the Company shall extend its Gas Pipeline System for the purpose of providing Gas Distribution Service to an applicant subject to the following conditions:
- (i) The extension required to the Company's Gas Pipeline System, excluding the service line, does not exceed 50 metres in length, and an easement or right of way satisfactory to the Company is provided, or
 - (ii) If the aforesaid extension exceeds 50 metres in length, the applicant has paid to the Company the amount, if any by which the total estimated costs of such extension exceed the amount which the Company estimates it will receive from the applicant for the first three years of Gas Distribution Service to the applicant excluding, however, amounts to be received in respect of revenue tax, property tax, federal excise tax, or any other

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federal or provincial tax other than income tax; provided that the Company may, at its option, accept in lieu of such payment the written undertaking of the applicant to pay such amount in such manner, upon such terms and over such period of time as is specified by the Company.

- (d) (1) If an applicant requests that the Company extend its Gas Pipeline System for the purpose of providing permanent Gas Distribution Service to two or more contiguous lots or parcels of land (hereinafter called "Lots"), and if clause (b) (i) hereof does not apply thereto, the Company shall, in accordance with these Terms and Conditions, extend its Gas Pipeline System as requested provided that:
 - (i) the applicant pays in respect of each Lot the costs referred to in clause (a) hereof; and
 - (ii) the applicant pays the estimated costs of such extension (which payment, for the purposes of clause (c) (ii) hereof, shall be divided by the number of such Lots to determine the Individual Lot Payment).
- (2) If permanent Gas Distribution Service to any such Lot commences to be taken within five years of such service being available, the Company shall, upon application by the applicant or his assignee, refund the Individual Lot Payment less any amount which would have been payable if clause (c) or (d) hereof would have otherwise applied.
- (e) In any case where clause (b) (ii) does not apply, but subject always to clause (a) hereof, the Company shall extend its Gas Pipeline System for the purpose of providing Gas Distribution Service to an applicant subject to the Applicant executing a Custom Service Letter Agreement in the form attached to these Terms and Conditions as Schedule D.

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ARTICLE 8 – SERVICE CONNECTION

8.1 Company Responsibility and Liability

8.1.1 *Continuous Supply*

The Company shall make all reasonable efforts to maintain continuity of Gas Distribution Service to its Customers, but the Company cannot guarantee an uninterrupted natural gas supply.

8.1.2 *Interruption*

Without liability of any kind to the Company, the Company shall have the right to disconnect or otherwise curtail, interrupt or reduce service to Customers:

- (a) whenever the Company reasonably determines that such a disconnection, curtailment, interruption or reduction is necessary to facilitate construction, installation, maintenance, repair, replacement or inspection of any of the Company's Facilities;
- (b) to maintain the safety and reliability of the Company's distribution system;
or,
- (c) due to any other reason related to dangerous or hazardous circumstances including emergencies, forced outages or Force Majeure.

8.1.3 *Reasonable Efforts*

The Company shall use reasonable efforts to minimize any scheduled curtailment, interruption or reduction to the extent reasonably practicable under the circumstances, to provide the Customer with prior notification of any such curtailment, interruption or reduction to the extent reasonably practicable, and to resume the Customer's Service Connection as promptly as reasonably practicable.

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8.1.4 *Company Liability*

Notwithstanding anything to the contrary contained in these Terms and Conditions, the Company shall not be liable for any loss, injury, damage, expense, charge, cost or liability of any kind, whether of direct, indirect, special or consequential nature, (excepting only direct physical loss, injury or damage to a Customer or a Customer's property, resulting from the negligent acts or omissions of the Company, its employees or agents) arising out of or in any way connected with any failure, defect, fluctuation, reduction or interruption in the provision of service by the Company to its Customers. For the purpose of the foregoing and without otherwise restricting the generality thereof, "direct physical loss, injury or damage" shall not include loss of revenue, loss of profits, loss of earnings, loss of production, loss of contract, cost of purchased or replacement capacity and energy, cost of capital, and loss of use of any facilities or property, or any other similar damage or loss whatsoever.

8.1.5 *Force Majeure*

Should the Company be unable, because of an event of Force Majeure, to provide a continuous supply of Energy to a Customer, the Company's responsibilities, so far as they are affected by the Force Majeure, shall be relieved and suspended during the duration of such circumstances and the Company shall not be liable for any failure to perform any term of these Terms and Conditions to the extent that and when such failure is due to, or is a consequence of, an event of Force Majeure. Where practical, the Company shall give notice to the affected Customers of such Force Majeure.

8.2 **Customer Responsibility and Liability**

8.2.1 *Customer Responsibility for Facilities*

The Customer shall be responsible for the installation and condition of all facilities on the Customer's side of the Point of Delivery, except Specific Facilities

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owned by the Company. The Customer shall be responsible for any destruction of or damage to the Company's Specific Facilities located on the Customer's premises where the destruction or damage is caused by a negligent act or omission or willful misconduct of the Customer or anyone permitted by the Customer to be on the premises.

8.2.2 Customer Liability

The Customer shall be solely responsible for and comply with the regulations regarding the installation, condition and maintenance of all piping, equipment, and apparatus on the Customer's side of the Point of Delivery, and the Customer shall indemnify and save harmless the Company from and against any claim or demand for injury to persons or damage to property arising out of or in any way connected with piping, equipment and apparatus on the customer's side of the Point of Delivery and the use made by the Customer of gas supplied by the Company, so long as such injury or damage is not caused by the negligence of the Company.

8.2.3 Service Calls

The Company may require a Customer to pay the actual costs of a Customer requested service call if the source of the problem is the Customer's own facilities.

8.3 Interference with the Company's Property

No one other than an employee or authorized agent of the Company shall be permitted to remove, operate, or maintain meters, equipment and other facilities owned by the Company without Company permission. The Customer shall not interfere with or alter the meter, seals, or other facilities or permit the same to be done by any person other than the authorized agents or employees of the Company.

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8.4 Unauthorized Use

Where the Company determines that there has been unauthorized use of the Service Connection including, but not limited to, meter or equipment tampering, unauthorized connection or reinstatement, theft, fraud, intentional or unintentional use of Energy whereby the Company is denied full compensation for Gas Distribution Services provided, the Company will bill the Retailer/DSP for the Company's estimate of energy for such unauthorized use and require Customer prepayment for repairs of damage or reconstruction of Company Facilities. Nothing in this section shall limit any other rights or remedies that the Company may have in connection with such unauthorized use.

8.5 Termination by Company

- (a) If a Customer violates any of these Terms and Conditions, or tampers with any of the Company's Gas Pipeline System or permits his service piping, or equipment connected thereto to become, in the opinion of the Company, hazardous, or neglects to pay the charges for Gas Distribution Service due to the Company at any of the times fixed for the payment thereof, or refuses to provide entry for company meter readings, or violates the provision of any contract or Rate Schedule applicable to him, or increases his Customer Load without the permission of the Company, or makes fraudulent use of the Company's Gas Distribution Service, the Company, or anyone acting under its authority, may, without prejudice to any other right or remedy which it may have against the Customer, on giving forty-eight (48) hours notice to the customer, disconnect the Gas Distribution Service from its system. Notwithstanding the foregoing, if, in the opinion of the Company, the condition of the Customer's piping or equipment attached thereto is so hazardous as not to safely permit the giving of notice, no notice shall be required. The Customer shall, notwithstanding the discontinuance of Gas Distribution Service, be liable for and pay to the Company all charges for Gas Distribution Service supplied up to the time of such discontinuance.

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- (b) When a contract for service is terminated by a Customer and a new application for service has not been received by the Company, the Company shall discontinue the Gas Distribution Service to the premises.
- (c) If the piping or equipment described in (a) above is found to be hazardous or non-compliant, the Company, at its discretion, may choose to disconnect or shut off only that portion or piece of equipment which is in violation, in order to maintain Gas Distribution Service to the remaining Customer facilities. The Company will report these incidences to the Authority having jurisdiction as per the Regulations made under the Act.

8.6 Multiple Dwellings

- (a) Each individual unit within a multiple dwelling will be served as a separate Point of Delivery, unless the Company agrees otherwise.
- (b) Where the Company and a Customer have agreed that Gas Distribution Service to a Multiple Dwelling shall be delivered through a single Point of Delivery, the applicable Rate Schedule will apply to the Gas Distribution Service in which case resale shall be permitted only under and subject to a contract in writing entered into between the Company and the Customer.

8.7 Mobile Homes

- (a) Service shall normally be provided to mobile homes through separate Points of Delivery, based on the applicable Rate Schedule.
- (b) Service provided to common use areas (e.g. laundry facilities) in a mobile home park shall be separately metered and billed at the applicable Rate Schedule.
- (c) In mobile home parks or trailer courts where the Company reasonably believes homes are temporary, the Company may elect to provide Gas Distribution

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Service only through the Point of Delivery billed to the mobile home park or trailer court.

8.8 Standard Delivery Pressure

Customer requests for service beyond the standard utilization pressure of 1.72 kPa may be required to pay a non-refundable contribution for the installation, administration and maintenance of the equipment required to comply with the request. The Company will meet the peak flow requirements of the Customer (as signed up) at the standard delivery pressure.

ARTICLE 9 – METERS

9.1 General Requirements

The Customer shall authorize the Company to connect automated meter monitoring equipment to the Customer's telephone line for the purpose of transmitting meter reading information. The Customer shall permit the Company to perform meter reading using automated monitoring equipment. The Company shall comply with the regulations of the authority having jurisdiction with regard to measurement equipment and devices.

9.2 Installation and Maintenance of Meters

The Company shall provide, install and maintain all necessary regulators and meters necessary for measuring the natural gas supplied to each Customer. Unless impractical, meters shall be installed on the outside of the premises, and in any case the location shall be subject to the approval of the Company so as to permit safe and convenient access, such approval not to be unreasonably withheld. In newly constructed premises, the Customer may be required to provide suitable inside telephone wiring to facilitate automated meter reading.

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9.3 Meter Test and Adjustments

- (a) The Company may inspect and test a meter at any reasonable time.
- (b) At the request of Measurement Canada or an accredited agency as may, from time to time, be designated for this purpose, the Company shall arrange for a meter to be removed and tested by an official designated for that purpose. The Company will direct customers wishing to dispute the meter to Measurement Canada.
- (c) If a test determines that the meter is not accurate within the limits set by government standards, the Retailer's/DSP bill will be adjusted accordingly. Where it is impossible to determine when the error commenced, it shall be deemed to have commenced three (3) months before the test or the date of the meter installation, whichever occurred later. The Company shall not be liable to the Customer or Retailer/DSP for any additional costs that are associated with such metering or meter reading errors.
- (d) The Company reserves the right to assess a charge to the Customer or Customer's Retailer/DSP at the time of a meter test. This charge is reimbursed in circumstances when the meter tested is found to be faulty.
- (e) If any appliance of a Customer connected to the Company's Gas Distribution Service prevents or impedes the meter from accurately recording the total amount of Energy supplied, the Company may forthwith disconnect the Gas Distribution Service, or disconnect such appliance from the Gas Distribution Service and shall, in either case, estimate the amount of Energy consumed and not registered, as accurately as it is able to do so, together with any costs incurred by the Company in disconnecting such Gas Distribution Service, or appliance, and repair any damage to the Company's Gas Pipeline System as the case may be. The Retailer's/DSP bill will be adjusted accordingly for the estimated amount of energy.

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ARTICLE 10 – RENDERING AND PAYMENT OF BILLS

10.1 Reading and Estimates

Time of Meter Reading and Billing

- (i) The Company shall keep an accurate record of all meter readings for the purpose of billing the Gas Distribution Services provided.
- (ii) Billing will be based on meter readings made by the Company from time to time or on estimates for those billing periods when the meter is not read. In any event the Company will require a meter reading by a Company representative at least once per year or as directed by Measurement Canada or such other Department as may from time to time be charged with such responsibility.
- (iii) Bills shall be rendered monthly based upon meter readings or estimates, as the case may be, provided that if the billing for any one or more billing period(s) is based upon an estimate, the same shall be adjusted in the next billing based upon a meter reading. The Company will use reasonable efforts to read meters within five (5) Business Days of the same date in each billing period in which bills are rendered upon the basis of meter readings.
- (iv) Failure to receive a bill shall not release the Customer or Customer's Retailer/DSP from its obligation to pay the same.
- (v) In the event that there is a discrepancy between the mounted meter index and a meter monitoring device, the mounted meter index reading will be deemed to be correct.

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- (vi) The Company reserves the right to assess a charge to the Customer or Customer's Retailer/DSP for additional reads above the Company's standard practices as defined in Schedule C hereof.

10.2 Proration of Bills

- (a) The amount of any initial and final charges, other than consumption-based charges, may be prorated, based upon the ratio of the number of days that service was provided to a Customer in the billing period to the total number of days in the billing period.
- (b) The Company may elect to change a Customer's meter reading schedule.
- (c) Where a meter reading schedule is changed, any charges other than consumption-based charges, during the transition period between the old and new meter reading schedule, may be prorated based upon the ratio of the number of days that service was provided to a Customer in the transition period to the total number of days in a normal billing period (thirty (30) days).
- (d) For all new accounts, the Company may add the charges for service provided during the initial period to the bill for the following billing period.

10.3 Payment

- (a) The payments for service provided to the Customer under the Rate Schedule and these Terms and Conditions (and collected by the Retailer, if applicable) shall commence on the earlier of the first billing date after the date upon which the Customer commences taking service, or thirty (30) days after the date that service is made available to the Customer.
- (b) The Customer shall pay all amounts required to be paid under these Terms and Conditions upon receipt of a bill for such amounts. Bills shall be deemed rendered and other notices duly given when delivered to the Customer at the

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address for service. Failure to receive such bill from the Company will not entitle the Customer to any delay in the settlement of each account, or to any extension of the date after which a late payment charge becomes applicable. Any bill rendered to a Customer for which valid payment has not been received by the date indicated on the bill shall be considered past due. The Company reserves the right to assess a late payment charge as set forth in the Rate Schedule.

- (c) Bills for Gas Distribution Service are due upon receipt and payable not later than the day shown upon the bill as the "due date". The Company shall not earlier than 15 days from the due date, but subject always to Article 8.5 exercise its right to discontinue service to that Customer by reason of non-payment of such bill.
- (d) The Company may refuse to accept payment on a Customer's account when payment by cheque is drawn on a form other than a bank cheque form. In the event the Company accepts payment by cheque drawn on any other form, the Customer shall be liable for and pay to the Company all charges and costs incurred to process the cheque. The Company follows the Bank of Canada rules and regulations of currency acceptance limitations.

10.4 Late Payment Charge

Any amount owing for service in a billing period and not paid by the due date shown on the bill shall be subject to a late payment charge in accordance with the Rate Schedule, all of which will be due and payable forthwith after the due date.

10.5 Dishonored Cheque Fee

The Company reserves the right to assess a service charge to the Customer, or the Customer's Retailer/DSP, in respect of any cheque returned by the Customer's bank for any reason as defined in Schedule C hereto.

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10.6 Adjustment of Bills

10.6.1 Billing Error

Should the Customer or the Retailer/DSP dispute any amount owing, the Retailer/DSP shall nonetheless pay such disputed amount and subject the dispute for resolution in accordance with these Terms and Conditions. Following resolution of any such dispute, the Company will return any amount found owing to the Retailer/DSP forthwith. The right or ability of either party to dispute a bill for service provided hereunder shall only apply to bills rendered during a period of two (2) years prior to the date of a written notice of such dispute. The Company may assess a charge to the Retailer/DSP for reviewing billing disputes, in circumstances where the Company has not been responsible for any billing error as established in Schedule C hereof.

ARTICLE 11 – CHANGE IN SERVICE CONNECTION

11.1 Prior Notice by Customer

- (a) A Customer shall give to the Company reasonable written notice prior to any change in Gas Distribution Service requirements, including any change in Load to enable the Company to determine whether or not it can supply such revised Gas Distribution Service without changes to its Gas Pipeline System. A Retailer/DSP, or any other person acting as Agent for a Customer, who provides the Company with verifiable authorization from the Customer, may give such notice to the Company on the Customer's behalf. If the Company receives such notice from a Retailer/DSP or Agent, the Company may, at its option, require such notice directly from the Customer. The Company shall not be obligated to supply to any Customer any Load in excess of that originally agreed to by the Company.
- (b) The Customer shall not change its requirement for a Gas Distribution Service without the Company's written permission. The Customer shall be responsible

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for all damage caused to the Company's Gas Pipeline System as the result of the Customer changing its requirements for a Gas Distribution Service without the Company's permission.

11.2 Changes to Company Facilities

If a change in a Customer's Load would require changes to the Company's Gas Pipeline System, that Customer may be required to pay the Company's costs of such changes other than those costs which the Company would have borne upon accepting an application to serve an increased Load in the first instance. In any event, that Customer shall pay the Company's capital cost, less depreciation, of existing Specific Facilities which would be removed as a result of such Load change, together with the estimated cost of removing the same less the estimated salvage value, if any, thereof.

11.3 Relocation of Company Facilities

In any case in which the Company is requested to relocate any of its Gas Pipeline System, including service lines, regulators and meters, or to install a remote meter index, the person requesting such relocation or installation may be required to pay the costs set out in Schedule C for so doing, and shall, if requested by the Company, pay the same in advance of the Company undertaking such relocation or installation. Any relocation shall be subject to the provisions of these Terms and Conditions. Any installation of a remote meter index or meter monitoring device shall be subject to these Terms and Conditions and to the Company's supply of such devices. The Company reserves the right, at its expense, to relocate regulators or meters for operating convenience.

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ARTICLE 12 – SERVICE DISCONNECTS, REINSTATEMENT AND REMOVAL

12.1 Disconnection

12.1.1 *Termination by Customer*

Unless precluded by contract from so doing, the Customer may, at any time, give to the Company five (5) Business Days notice of termination of Gas Distribution Service. Upon receipt of such notice, the Company may read the meter attached to such Gas Distribution Service, and Customer shall pay for all Gas Distribution Service supplied prior to such reading. In the event that Company is unable to read the meter upon receipt of Customer notice of termination, the charge for Gas Distribution service supplied shall be based on an estimated meter reading which will be prorated from the time of an actual meter reading.

12.1.1A *Temporary Disconnection*

Upon the request of the Customer, the Company shall temporarily disconnect any Service Connection provided:

- (a) Upon the request to restore service the Customer or the Customer's Retailer/DSP will be responsible for and pay any applicable charges outlined under Article 12.2.
- (b) If the Service Connection remains disconnected for greater than six (6) months, the facilities located downstream of the meter outlet are subject to retest as prescribed by the authority having jurisdiction.
- (c) If the Service Connection remains disconnected for greater than twelve (12) months, it will be considered permanently disconnected and administered as per Article 12.1.1B herein.

Effective July 1, 2010

12.1.1B Permanent Disconnection

- (a) If the Customer requests the Service Connection to be permanently disconnected, the Customer billing for that service will be finalized. At the discretion of the Company, the Gas Pipeline System provided by the Company may be removed.

- (b) If within three (3) years of permanent disconnection the Customer requests the Service Connection be restored, the Customer or the Customer's Retailer/DSP must pay all the costs associated with the original disconnection, removal of the Gas Pipeline System and restoration of service.

12.1.2 Disconnection at Request of Retailer/DSP

In accordance with sub-section 5(1) of the R3 Regulation, the Retailer/DSP shall have the right to request that the Company disconnect service to a particular Customer, and Company shall comply with that request, unless such action is inconsistent with Schedule B of the Company's Terms and Conditions for Distribution Access Service.

12.1.3 Disconnection by the Company

- (a) The Company reserves the right to disconnect Gas Distribution Service to the Site in a number of circumstances, including, but not limited to: failure to provide access at least once per year for meter reading; threats or harassment of employees or agents of the Company; non-payment of the Company bills or any past due charges by the Customer; evidence of safety violations, Energy theft, or fraud by the Customer; or the Customer failing to meet its obligations under these Terms and Conditions or the Natural Gas Service Agreement. If a Customer notifies the Company to disconnect service and is enrolled with a Retailer/DSP, the Company will complete the request and subsequently notify the Customer's Retailer/DSP.

Effective July 1, 2010

- (b) If the disconnect is a result of a safety violation, the Company will reinstate the service when the safety problem is resolved and when the Customer has provided, or paid the Company's costs of providing, such devices or equipment as may be necessary to resolve such safety problem and to prevent such damage, interference or disturbance and upon receipt of Retailer/DSP authorization where required. The Company may assess a reinstatement charge to the Retailer/DSP as set forth in Schedule C hereof.

12.2 Reinstatement Service

This section applies when the Company is asked to reinstate or restore Gas Distribution Service to a Customer whose Gas Distribution Service was discontinued (whether or not at the request of the Customer or the Customer's Retailer/DSP).

Before reinstating or restoring service, the Customer or the Customer's Retailer/DSP must ensure facilities downstream of the meter conform to the requirements of the authority having jurisdiction and shall pay:

- (a) any amount owing to the Company including written off accounts;
- (b) a reinstatement charge as defined in Schedule C.

12.3 Removal of Facilities

Upon termination of Gas Distribution Service, the Company shall be entitled to remove any of its Gas Pipeline System or Specific Facilities located upon the property of the Customer and to enter upon the Customer's property for that purpose. The Customer may be required to pay the actual cost of removal.

Effective July 1, 2010

SCHEDULE C – NON-DISCRETIONARY CHARGES

1.0 APPLICABILITY

Applicable to every Customer within the Company's service area. The service charges outlined herein are also outlined in the Company's Terms and Conditions for Distribution Access Service. This is done to ensure the Customer (or Retailer/DSP) is aware of the charges that may apply whether they are reviewing this set of Terms and Conditions or the other. However, the listing of these charges in both sets does not entitle the Company to recovery of these charges under each Terms and Conditions.

2.0 SCHEDULE OF CHARGES

All charges and provisions of the Customer's applicable price schedule shall apply in addition to the following charges for the service being provided:

Effective July 1, 2010

SCHEDULE C
NON DISCRETIONARY CHARGES
 Effective January 1, 2010

1. **SERVICE LINES:** Applicable to all services except those eligible for grants under the Rural Gas Act.

1.1 Pipe Installation:

ATCO Gas (North)		
Service Line Diameter	Summer	Winter
15.9 mm or 26 mm (up to and including 15 metres)	\$580*	\$830*
Linear charge for length over 15 metres	\$47/metre	\$64/metre
42.2 mm or 60.3 mm (up to 15 metres)	\$780*	\$1,130*
Linear charge for length over 15 metres	\$66/metre	\$89/metre
Greater than 60 mm	Contract Price	Contract Price
Credit for provision of service line trench in 4-party installation	\$40	\$200

ATCO Gas (South)		
Service Line Diameter	Summer	Winter
15.9 mm or 26 mm (up to and including 15 metres)	\$430*	\$620*
Linear charge for length over 15 metres	\$31/metre	\$44/metre
42.2 mm or 60.3 mm (up to 15 metres)	\$780*	\$1,130*
Linear charge for length over 15 metres	\$66/metre	\$89/metre
Greater than 60 mm	Contract Price	Contract Price
Credit for provision of service line trench in 4-party installation	\$40	\$200

Notes:

1. Winter and Summer conditions are determined by the ATCO Gas representative on site. Typically winter conditions are 150mm or more of frozen ground conditions and / or 300mm or more of snow cover. If construction occurs within the winter construction season as determined by ATCO Gas, winter construction rates will apply.
2. The customer will be charged for the Primary Service line from the property line to the Gas Meter location when the main is located outside the customer's property.
3. The customer will be charged for the Primary Service line from the edge of easement to the Gas Meter location when the main is located in an easement within the customer's property.

*The fixed charge will be phased in over three years as per the following table:

	Service Size	Summer			Winter		
		2010	2011	2012	2010	2011	2012
South	15mm or 26mm	\$430	\$520	\$620	\$620	\$710	\$810
	42mm or 60mm	\$780	\$960	\$1140	\$1130	\$1310	\$1490
North	15mm or 26mm	\$580	\$720	\$860	\$830	\$970	\$1110
	42mm or 60mm	\$780	\$960	\$1140	\$1130	\$1310	\$1490

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1.2 Mobilization Charge: A mobilization charge of \$150.00 will be levied for each additional site visit required when a site with an inspector confirmed site ready date does not meet ATCO Gas requirements for service line installations upon arrival of the service installation crew

1.3 Pavement and Concrete Breaks: Contract Price. Applicant responsible for settlement and permanent repair

1.4 Crossings: Including highway, railroad, road, pipeline, canal - Contract Price

1.5 Compaction: Contract Price

1.6 Shallow Utility Crossings: Contract Price

1.7 Waste Removal: Contract Price

2. COMPANY RURAL INVESTMENT: “three times net revenue”

3. REINSTATEMENT CHARGE:

a. Residential (not before 8am of the next business day) - \$90.00

b. Residential (before 8am of the next business day) - \$205.00

c. Non-Residential (not before 8am of the next business day) - Contract Price (minimum \$90.00)

d. Non-Residential- (before 8am of the next business day) - Contract Price (minimum \$205.00)

4. METER RELOCATIONS

4.1 Single Family Dwelling: Inside to outside – No direct ATCO Gas charges if viewed as required by ATCO Gas. Customer may be responsible for permitting fees and site clean up. All other moves at Contract Price.

4.2 Other: Contract Price

5. INSTALLATION OF AUTOMATIC METER READING OR REMOTE METER READING DEVICE - \$170.00

6. ALTERATIONS, RELOCATIONS AND REPLACEMENT - Contract Price

7. SERVICE CALL FOR PROBLEMS CAUSED BY CUSTOMERS - Contract Price including estimated cost of lost gas

8. TEMPORARY SERVICE – Contract Price

9. SPECIAL METER READ FEE: \$50.00

10. METER DISPUTE FEE:

a. Residential - \$110.00

b. Non-Residential - Contract Price (minimum \$110.00)

c. Customer Usage Information Fee will apply as required.

11. DISHONOURED CHEQUES: \$30.00

12. CUSTOMER USAGE INFORMATION: Contract Price

13. PROVISION OF CUSTOMER INFORMATION TO THE COMPANY: Contract Price

14. BILLING ERROR: Contract Price

NOTE: All charges in Schedule C are subject to GST except the “Dishonored Cheque” charge.

Effective July 1, 2010

SCHEDULE D- CUSTOM SERVICE LETTER AGREEMENT

Date _____

Attention: _____

Dear _____:

Re: Custom Service Request for _____

Further to the Custom Service request submitted by _____ to the location described below, ATCO Gas confirms its ability to provide such Custom Service subject to the conditions contained in this Agreement.

1.0 Location

Custom Service is to be provided at the following location _____

2.0 Custom Service Requested

_____ confirms that the Custom Service requested is as following:

Maximum Daily Volume (GJ) _____
Minimum Delivery Pressure (kPa) _____
Maximum Hourly Flow Rate (GJ/hr) _____
Other _____

3.0 ATCO Gas Investment

The amount of ATCO Gas Investment for the Specific Facilities is contingent on the Customer's Contract Demand, the applicable High Use Rate and the Term of this Agreement. ATCO Gas Investment will be no greater than to the net present value of the rate revenue during the Term of this Agreement discounted at a rate equal to ATCO Gas' weighted average costs of capital (WACC).

For the purposes of this Custom Service Letter Agreement and based on the Contract Demand of _____ and the Term of the Agreement as specified below, the ATCO Gas Investment is as shown below.

Terms and Conditions for Distribution Service Connections

Effective July 1, 2010

4.0 Specific Facilities

The following facilities (the “Specific Facilities”) are required to provide Custom Service as specified in Section 2.0 of this Agreement at the location specified in Section 1.0 of this Agreement:

- 1.
- 2.
- 3.
- 4.
- 5.
- 6.

Total Estimated Cost of Specific Facilities: \$ _____

5.0 Term of Agreement

_____ agrees that the term of this Agreement will be for _____ years commencing on _____.

6.0 Customer Contribution

Customer Contribution is defined as the difference between the estimated costs of the Specific Facilities as specified in Section 4.0 of this Agreement and any amount of ATCO Gas Investment as specified in Section 3.0 of this Agreement.

_____ agrees that the Customer Contribution for the Custom Service requested is as shown below.

7.0 Payment of Customer Contribution

Option 1

_____ agrees to pay for the Customer Contribution of _____ by _____. _____ agrees that no work shall commence until ATCO Gas has received the 50% of the Customer Contribution amount. The remaining 50% is due upon completion of the work, and prior to the commencement of Gas Distribution Service.

Option 2

Subject to credit approval by ATCO Gas, _____ agrees to pay for the Customer Contribution amount on a monthly basis over the Term of the Agreement. The monthly payment will include return, income tax and depreciation costs.

Effective July 1, 2010

_____ agrees to pay ATCO Gas on a monthly basis over the Term of the agreement the following amount shown below.

8.0 Prudential Requirements

_____ agrees to provide and comply with the prudential requirements specified by ATCO Gas below.

9.0 Rate Schedule and Terms and Conditions for Distribution Service Connections (DSC)

_____ agrees to pay for its Gas Distribution Service in accordance with the Company's Rate Schedules and Terms and Conditions for DSC as approved by the Alberta Utilities Commission.

10.0 Acceptance of Agreement

Upon receipt of an executed original of this Agreement and compliance with the terms of this Agreement, ATCO Gas will proceed with all required engineering design work, purchase of materials, construction work and installation of the facilities as outlined herein.

This agreement is subject to all applicable regulatory approvals and ATCO management approvals.

Sincerely,

ATCO Gas

ATCO Gas Representative

AGREED TO AND ACCEPTED
THIS _____ DAY OF _____

PER: _____

TITLE: _____